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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in Haiti

Report submitted by Mr. Marco Tulio Bruni Celli, Special Rapporteur, in accordance with Commission resolution 1993/68

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Introduction

Mandate of the Special Rapporteur

1. At its forty-ninth session, the Commission on Human Rights considered the report of the Special Rapporteur (E/CN.4/1993/47) and, on 10 March 1993, adopted without a vote resolution 1993/68 on the "Situation of human rights in Haiti", in which it decided to extend for a further year the mandate of the Special Rapporteur, who was requested to submit an interim report to the General Assembly at its forty-eighth session and a final report to the Commission on Human Rights at its fiftieth session. The Commission decided to continue considering the situation of human rights in Haiti at its fiftieth session under the agenda item "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories".

2. The recommendations and measures approved by the Commission in its resolution 1993/68 guided the Special Rapporteur in his investigations and in the preparation of the interim report submitted to the Third Committee of the General Assembly on 22 November 1993 and of this final report on the situation of human rights in Haiti.

Earlier work by independent experts and by the Special Rapporteur

3. The situation of human rights in Haiti in recent years has been discussed and described in reports by the independent experts and Special Rapporteur appointed by the Commission. In addition to presenting information on the continued violations of human rights, the reports have also pointed to the social, economic, cultural and political problems in Haitian society that have particularly hindered the development of the democratic process and basic democratic institutions and, consequently, respect for human rights and fundamental freedoms.

4. The reports received and considered by the Commission on Human Rights during the period 1981-1986 were summarized in the report which the Special Rapporteur submitted to the Commission at its forty-third session, in 1987 (E/CN.4/1987/61). In addition to synthesizing previous reports, this report provided an overview of economic and social conditions in Haiti and the human rights situation in general as well as an analysis of relevant institutional aspects such as the constitutional system, legislation, the prison system and the administration of justice.

5. From 1988 to 1991, the reports submitted to the Commission dealt with the general situation in Haiti, particularly the political instability which followed the end of the Duvalier regime in 1986, problems in the establishment and functioning of democratic institutions, and the socio-political environment surrounding the grave human rights situation which has prevailed since then. The reports denounced the suppression and arbitrary suspension of fundamental civil rights, particularly the freedoms of expression, opinion, press and assembly as well as trade union freedoms and guarantees. They also discussed the frequent instances of arrests without formal charges or due process. Also analysed were rural and urban violence; the deplorable prison conditions, systematic torture and ill-treatment; the

denial of political rights; and, in general, continued violations of the rights enunciated in the Haitian Constitution and in the human rights declarations and treaties to which Haiti is a party.

6. The report which the Special Rapporteur submitted to the Commission at its forty-eighth session in his capacity as independent expert (E/CN.4/1993/50 and Add.1) provided a detailed account of the country's history and analysed its political, social and economic characteristics. The report also gave an overview of the situation in Haiti during 1991 which included criticisms both of the situation under President Aristide's Government beginning in February and of the situation following the coup d'état on 29 September of that year. One chapter was devoted to the legal background and institutional aspects of human rights. Special emphasis was placed on external cooperation and the international community's efforts to restore democracy.

7. The report which the Special Rapporteur submitted to the Commission at its forty-ninth session (E/CN.4/1993/47) reviewed the principal human rights violations in Haiti in 1992, with special emphasis on: repression and violence; violation of the right to life, liberty and security of person; violation of the right to protection against arbitrary arrest and detention and against torture and other cruel, inhuman or degrading treatment; and violation of the right to freedom of opinion and expression and the right to freedom of assembly and association. A special chapter was devoted to the situation of the boat people and another to institutional obstacles to the protection of and respect for human rights, and a description and detailed analysis was provided of the negotiations which had been launched in Haiti largely as a result of pressure by the international community and certain individual countries with a view to the restoration of democracy and the reinstatement of Aristide as President of the Republic.

Appointment of Mr. Marco Tulio Bruni Celli as Special Rapporteur

8. At its forty-ninth session, the Commission on Human Rights again extended Mr. Bruni Celli's mandate as Special Rapporteur. The Economic and Social Council approved this extension in its decision 1993/276 of 28 July 1993. Mr. Bruni Celli accepted the appointment with pleasure and pledged to carry out the task entrusted to him.

Activities of the Special Rapporteur under his mandate

9. In carrying out his mandate, the Special Rapporteur enjoyed useful cooperation from the Centre for Human Rights. The Special Rapporteur also received valuable assistance from the Inter-American Commission on Human Rights (IACHR), particularly from Ambassador Edith Márquez Rodríguez, its Executive Secretary, Ms. Bertha Santoscoy Noro, chief specialist for Haitian affairs, and Ms. Meredith Caplan, attorney for the Commission.

10. In the course of his work, the Special Rapporteur held talks in July 1993 with the directors and staff of the Centre for Human Rights. There he began to prepare his report.

11. The Special Rapporteur decided to travel to Washington, New York and Haiti in order to talk to senior officials of the United Nations and the Organization of American States (OAS) working with the Haitian crisis, and with the participants themselves in order to familiarize himself with the details of the political negotiations aimed at resolving the crisis and to learn about the situation of human rights in Haiti firsthand. The Executive Office of the Secretary-General advised the Special Rapporteur to postpone his visit until after the Government of the Prime Minister-designate, Mr. Robert Malval, had taken office. The Special Rapporteur agreed to do so, although he was in fact scheduled to visit Haiti from 23 to 27 August 1993 in his capacity as a member of IACHR, which had already planned a visit. The Centre for Human Rights drew up the programme and made the necessary logistical arrangements for the visits to Washington and New York, while IACHR did the same for the visit to Haiti.

12. The Special Rapporteur travelled to Washington on 13 August 1993. He met with the Executive Secretary of IACHR and members of her staff, who provided him with much information and documentation regarding the situation in Haiti. On 16 and 17 August he met individually with Ambassadors Guido Groscoors of Venezuela, Jean-Paul Huber of Canada, Jean Casimir of Haiti, Antoine Blanca of France and Harriet Babbitt of the United States of America, all of whom are the permanent representatives of their respective countries to the OAS. He also met with Mr. John Shattuck, Secretary of State for Human Rights and Humanitarian Affairs of the United States of America; Ambassador Lawrence Pezzullo, the United States Government's Special Adviser on Haitian Affairs; and Mr. Richard Miller, Director of the Democracy and Human Rights Office of the International Organizations Section of the Department of State. With all of them he discussed the negotiations in progress, the agreements reached, possibilities and problems relating to their implementation, and the programmes to be launched in Haiti for the safeguarding, promotion and respect of human rights.

13. During his visit to Washington, the Special Rapporteur was able to meet on 16 August with President Jean-Bertrand Aristide, at which time the President gave his own assessment of the situation in Haiti and his views and opinions regarding the negotiations, the agreements reached and their implementation and prospects; in particular, he set out the highlights of his programme for reconstruction and national unity.

14. Unfortunately, the Special Rapporteur was unable to meet with Ambassador João Clemente Baena Soares, Secretary-General of OAS, as the latter was away from Washington at the time.

15. In New York the Special Rapporteur spoke to senior officials of the United Nations and representatives of non-governmental organizations. On 19 August he met individually with the Special Envoy of the Secretary-General of the United Nations and of the Secretary-General of OAS, Mr. Dante Caputo, and the Senior Adviser to the Secretary-General of the United Nations for Political Affairs. On the same day he met also with Mr. Robert O. Weiner, coordinator of programmes for Latin America and the Caribbean of the Lawyers Committee for Human Rights, and with Ms. Candy Wittam, that organization's liaison officer to the United Nations. He met

also with Ms. Mary Jane Camejo of Americas Watch. On 19 August he met with Mr. Jocelyn McCalla, Director of the New York office of the National Coalition for Haitian Refugees.

16. During his visit to New York, the Special Rapporteur was also able to obtain documentation on the human rights situation in Haiti from the Centre for Human Rights liaison office and from various non-governmental organizations.

17. The Special Rapporteur travelled to Haiti on 22 August 1993. As in the past, he made this visit in his capacity as a member of the Inter-American Commission on Human Rights. There he met with the members of the International Civilian Mission. He also met with Father Antoine Adrien and Mr. Jean-Baptiste Chavannes, members of the Presidential Negotiating Commission appointed by President Aristide.

18. On 23 August the Special Rapporteur and the other members of the Inter-American Commission on Human Rights attended a protocol meeting with the de facto Minister for Foreign Affairs, Mr. François Benoît.

19. Also on 23 August the Special Rapporteur held talks at Port-au-Prince with representatives of the leading human rights non-governmental organizations in Haiti: Mr. Necker Dessables, Mr. Paul Dejean and Mr. Jean-Claude Jean of La Plateforme; Mrs. Gladis Joseph of Sant Karl Levek (Centre Karl Leveque); Ms. Georgette Senatus of the Comité des avocats haïtiens; Mr. Jean-Claude Bajeux, Mr. Jean Robert Vaval and Mr. Jean Robert Benoît of Centre oecuménique des droits humains; Mrs. Ann Fuller and Mr. Pierre Esperance of the National Coalition for Haitian Refugees; Mr. Jean Joseph Exumé, Legal Counsel; Mr. Joseph Polycarpe, Mrs. Marcel Hilaire and Father Hugo Trieste of the Commission de justice et paix; and Mrs. Jessie Ewald Benoît of Agence du développement économique intégré et Commission des droits humains. With all of these he reviewed the situation of human rights in the country, particularly information substantiating actual violations in Port-au-Prince as well as in the country's other cities and in rural areas.

20. On 24 August the Special Rapporteur met with General Raoul Cédras, Commander-in-Chief of the Haitian Armed Forces, who was accompanied by the eight colonels who make up the High Command, with whom he discussed the political crisis and, in particular, the human rights situation in the country and the role of the military. He also had talks with Mr. Jean-Louis Firmin, President of the Senate, and Senators Turneb Delpé and Rony Mondestin. That afternoon he met with the following representatives of the mass media: Mrs. Yolette Mengual and Mr. Evariste P. Michel of Radio Arc-en-Ciel; Mr. Jean Germain Alexandre and Mr. Patrick Mousignac of Radio Caraïbes; Mr. Even Dubois of the newspaper Le Nouvelliste; and Mr. Jean Marie Dorsainville of Radio Soleil. He met also with Mr. Antoine Izméry and Father Ivon Massak, representatives of the Komité de Liberté (KOMEVEB) and with the following representatives of Haitian trade unions: Mr. Jean Claude Lebrun and Mr. Marc Antoine Destry of the Confédération des travailleurs haïtiens (CTH); Mr. Gesner Jean-Philippe of the Organisation générale indépendante des travailleurs et travailleuses d'Haïti (OGITH); Mr. Gabriel Miracle,

Mr. Raymond Viueu and Mr. Gesner Milcent of the Centrale autonome des travailleurs haïtiens (CATH); and Mr. Joseph Lefils and Mr. Deceus Louisius of the Fédération des ouvriers syndiqués (FOS).

21. On 25 August he travelled to Saint-Marc and Gonaïves. At Saint-Marc he visited one of the offices of the International Civilian Mission and met with two of its members, Mr. Alejandro Carnero and Mr. Gustavo Cortez; he also visited the Saint-Marc prison and met with the captain in command of the military barracks. In Gonaïves he met with Bishop Gérard Dormeril (of CARITAS) and spoke to recent victims of human rights violations, who provided him with firsthand testimony of the severe and ongoing military repression in the area.

22. On 26 August the Special Rapporteur met with Prime Minister Robert Malval at his residence. He also met that day with Mrs. Huddleston, chargé d'affaires at the Embassy of the United States of America, and Miss Ellen Cosgrave, a member of the United States Foreign Service in Port-au-Prince. He met also with representatives of some of the major political parties: Mr. Victor Benoît, Mr. Evans Paul and Mr. Turneb Delpé of the Front national pour le changement et la démocratie (FNCD) and the Comité national du Congrès des mouvements démocratiques (KONAKOM); Mr. George Pierre-Charles George of the Lavalas movement; Mr. René Théodore of the Mouvement pour la reconstruction nationale (MRN); Mr. Reynols Georges of the Alliance pour la libération et avancement d'Haïti (ALAH); and Mr. Leslie Manigat, former President of the Republic and Secretary-General of the Rassemblement des démocrates nationaux progressistes (RDNP).

23. In accordance with Commission on Human Rights resolution 1993/68, the interim report on the situation of human rights in Haiti was submitted to the Third Committee of the United Nations General Assembly in New York on 22 November 1993. The document now submitted is the final report, which has been updated to 10 January 1994.

I. ECONOMIC AND SOCIAL SITUATION

24. Haiti is the poorest and most densely populated country in the western hemisphere, and one of the poorest in the world. Two thirds of its population is below the poverty level and it ranks 124th in the list of the 160 least developed countries. In 1991, Haiti had a per capita gross domestic product (GDP) of $360, life expectancy of 55 years, an unemployment rate of more than 50 per cent and an annual demographic growth rate of 2.1 per cent, despite a very high rate of infant mortality. 1/

25. Haiti's severe poverty has had a major impact on the Haitian population's enjoyment of economic, social and cultural rights. Unemployment, hazardous and insanitary housing, illiteracy, morbidity and mortality have combined to create virtually subhuman living conditions. 1/

26. In 1991, only 60 per cent of the Haitian population reportedly had access to health-care services. According to information received by the Special Rapporteur, there is an average of 1.7 physicians and 1.3 nurses in the public sector for each 10,000 population. Furthermore, most of the health personnel reside in the western part of the country, particularly Port-au-Prince,

leaving the provinces with little if any access to health care. With regard to physicians in the private sector, the majority are said to charge fees which are prohibitively high for most Haitians. 1/

27. The Haitian population suffers greatly from poor sanitation, air pollution, unhealthy housing and untreated waste. Only 32 per cent of Haiti's rural population and 50 per cent of the urban population reportedly have access to drinking water, and the service rate in some villages is said to be less than 10 per cent. 1/

28. While the general mortality rate is said to be 36 per 1,000, infant mortality (birth to one year of age) is estimated at between 92 and 107 per 1,000. Transmissible, infectious and parasitic diseases are among the leading causes of death. Eighty per cent of the population is said to be exposed to the risk of malaria.

29. Another major cause of morbidity is malnutrition. Haiti's population is reported to suffer from an average calorie deficiency of 20 per cent and an average protein deficiency of 32 per cent. 1/ The economic crisis, the increase in unemployment and underemployment and consequently the family's reduced purchasing power, as well as minimal agricultural production are the principal factors in the level of malnutrition in Haiti.

30. The farming sector is Haiti's most important economic sector, accounting for 70 per cent of the country's food needs; in 1990, out of 2 million people employed in Haiti, 1.3 million were in agricultural jobs. 1/ However, deforestation and soil erosion are reportedly jeopardizing the country's current and future productive capabilities. In addition, structural problems and the droughts of 1990 and 1991 caused a drop in production of the main food crops.

31. Schools, electricity, telephones and roads are scarce or, in the rural areas, lacking altogether. Furthermore, since October 1991, the return of the population to rural areas to escape from repression and unemployment has intensified the problem of inadequate drinking water, health and malnutrition.

II. THE HUMAN RIGHTS SITUATION IN HAITI

A. Introduction

32. During the period since February 1993, when the Special Rapporteur submitted his previous report to the Commission on Human Rights, repression and politically motivated violence have persisted in Haiti. Human rights violations have remained systematic and widespread; harassment, intimidation, attacks, arbitrary arrests, summary executions and torture continue to be carried out with impunity by members of the military and civilians working with them, especially the "section chiefs". Such violations have prevailed, despite the presence of the joint United Nations-Organization of American States International Civilian Mission to Haiti, and even following the signing of the Governors Island Agreement on 3 July 1993. As stated in the interim report of the Mission for the period from 9 February to 31 May 1993.

> "The Mission noted that, as it was gradually deployed, individuals, organizations and sectors of the population regained confidence and tried to recover rights of which they had been deprived since the coup d'état. The response of the authorities to these attempts has been increased, or at least more selective, repression" (A/47/960 and Corr.1, para. 13).

Furthermore, since October 1993, when the military authorities decided not to comply with the Governors Island Agreement, paramilitary forces and armed civilian bands have sown terror amongst the Haitian population, operating with total impunity. Victims include members and leaders of popular and human rights organizations, peasants, trade unionists, students, journalists, clergy and anyone suspected of supporting the return of President Aristide. Repression in the rural areas and in Port-au-Prince slums, such as Cité Soleil, remains particularly intense, and even possessing or circulating photographs of President Aristide can be a cause for arrest.

> "Many of the cases of arbitrary arrests, illegal detention and torture can ... be seen to have been linked to the attempts of the victims to exercise their right to freedom of expression, most commonly by expressing their support for President Aristide" (A/48/532/Add.1, para. 22).

According to information received by the Special Rapporteur, a general climate of fear and terror exists in the country and the number of those killed since the September 1991 coup by the Haitian army, police and their civilian supporters, is believed to be as high as 3,000. As one source states, it is difficult to assess the actual number of political and extrajudicial killings because the judicial authorities rarely conduct criminal investigations into any unexplained deaths, including violent ones such as murder, whether political or not. 2/

33. Security forces continue to extort money from the poorest people, who pay in order to avoid arbitrary arrests, beatings and ill-treatment or to obtain their release from prison. Such extortions have forced some victims to sell all their possessions or surrender the deeds to their land in order to pay their ransom, leaving them even further impoverished.

34. According to the report of the International Civilian Mission (A/48/532/Add.1, para. 29), since the Mission's evacuation on 15 and 16 October 1993, it has received reports that specific threats have been made to local employees of the Mission and to the people who had been in contact with it.

B. Violation of the right to life, liberty and security of person

35. Violations of the right to life and physical integrity continued in Haiti during 1993 and early 1994, intended primarily to restrict or prohibit the exercise of the freedom of opinion and expression, assembly and peaceful association. 3/ Cases of summary execution, physical violence, persecution and harassment have been brought to the attention of the Special Rapporteur. Persons suspected of supporting President Aristide continue to be particularly targeted, as do members of trade unions, popular organizations considered pro-Lavalas (the movement that supported the election of President Aristide),

and neighbourhood associations, as well as simple citizens who had the misfortune to be in the wrong place at the wrong time. Children, women and the elderly have not been immune to the violence.

36. There was an upsurge in human rights violations in Haiti in the spring of 1993, particularly in Port-au-Prince and the North-West and Central Departments. According to reports received by the Special Rapporteur, the rise in violations may have been a reflection of the military's unease at the negotiations under the auspices of the United Nations and OAS. In the period from 30 April to 30 May in Port-au-Prince alone, at least 15 persons are said to have been summarily executed by members of the military and the civilians working with them. 4/

37. The International Civilian Mission has expressed particular concern about acts of violence carried out by the zenglendos or other criminal groups acting with impunity and apparently under the cover, or with the express or tacit consent, of the de facto authorities. The term zenglendos denotes criminals who are recruited from groups ranging from the marginal social strata found in working-class districts to police officers themselves, usually acting at night, in civilian clothes and with official weapons. This phenomenon, which is particularly evident in Port-au-Prince, is aimed, in some cases at least, at intimidating sections of the democratic opposition, and goes hand in hand with the upsurge in arbitrary executions for political reasons. In the working-class districts, zenglendos are creating a climate of general fear, for their victims are not necessarily political militants or sympathizers. The existence of paramilitary groups or bands of delinquents which are tolerated by the army has also been reported in certain provincial regions (A/47/960 and Corr.1, paras. 28-30).

38. The Mission has further reported that their investigations into those responsible for human rights violations have indicated that they were armed with automatic weapons (Uzis and M16s) and operated in red or white pick-up vehicles, sometimes with government plates. In several cases there was information regarding a direct link between the perpetrators and the Haitian Armed Forces (FADH), and the impunity and logistical support of their operation is strongly indicative of FADH involvement. In some cases, violations were perpetrated directly by members of the Haitian Armed Forces acting in uniform (A/48/532/Add.1, paras. 6 and 7).

39. The following are among the cases of summary or arbitrary killings brought to the Special Rapporteur's attention.

40. On 22 March 1993, Yvon Raymond, a Catholic church official at Les Cayes, was reportedly killed by armed civilians. On 24 March, the bodies of Pastor Marcel Pontus and Jeannot Louis Jean, members of the Evangelical Baptist Mission in the south of Haiti, were recovered from the University Hospital morgue; the victims are said to have been abducted on 18 March 1993 by an armed civilian and taken to military headquarters. Following his disappearance on 16 March 1993, Jean Jorélian, a well-known Aristide supporter, was found dead during the week of 22 March; his body reportedly bore signs of beatings and machete wounds.

41. On 5 May 1993, Jean-Claude Drouillard is said to have been killed by armed civilians in Delmas 17, Port-au-Prince, because he was too interested in political problems. 4/ On 9 May, Mrs. Illia Davilma was reportedly summarily executed by members of the military in Cité Soleil, Port-au-Prince, for having informed members of the International Civilian Mission of the situation of repression in the country. 4/

42. On 17 May 1993, at about 1 a.m. at Pétion-Ville, four men in police uniform reportedly burst into the home of Frédéric Dabon who, together with his brother-in-law, Abel Sarasin, was considered to be a supporter of President Aristide. They demanded to see Mr. Dabon. Since he was not at home, they turned on Mr. Sarasin, a friend who had stopped by, and killed him. They then demanded 750 Haitian dollars from Mrs. Afia Dabon before fleeing (A/47/960 and Corr.1, para. 33 (a)).

43. On 27 July 1993, Senator Thomas Eddy Dupiton was reportedly shot and wounded in front of his house by unknown men who opened fire on him. Several other persons who were with him were also reported to have been wounded.

44. It is further alleged that bodies have been left on the streets of Port-au-Prince. Residents of the zone of Lafito allegedly reported the discovery of the bodies of eight young people who are believed to have been summarily executed there during the night of 2 to 3 March 1993. The body of a 12-year-old girl is said to have been seen on 14 April on a Port-au-Prince sidewalk. The following day, in exactly the same place, the body of a young man whose feet and hands were bound was discovered; both corpses reportedly remained on the street throughout the day.

45. Carmen Dorcéus, a mother of two young children resident at Pont Sondé, is said to have been subjected to persecution by members of the military. Reportedly, on 7 February 1993, two members of the military and a woman violently entered her home and demanded the whereabouts of her husband. When she replied that she did not know where he was, the soldiers are said to have forced her to leave her home with her three-month-old daughter and taken her to an abandoned pharmacy where there were two other people. After speaking to her, they are said to have taken her back to her home, where she was then beaten and raped by the soldiers, and her young daughter slapped.

46. It has been reported that in early April 1993 members of the church, political parties and labour unions were subjected to particular persecution and harassment by the military forces. Among the victims were members of the Baptist church, Faneyus and Antoine Suprenor; the elected mayor of Môle Saint-Nicolas and member of the Christian Democratic Party, Antoine Brunot; and members of IPAB (Inyon Peyzan Agrikilte de Bombardopolis). On 1 April, at Bombardopolis, members of the military are said to have severely beaten Jean-Claude Clergé, a justice of the peace and member of IPAB appointed by the constitutional Government. On the same day, at Flosky, the same military group is said to have ransacked the headquarters of IPAB and beaten several young girls who were present. In mid-April, the staff and children at the orphanage for street boys "Lafanmi Selavi" (La famille c'est la vie) in Port-au-Prince are said to have been subjected to threats and harassment by a group of some 10 attachés (civilians working with the police). The orphanage

was founded by Jean-Bertrand Aristide in 1986 and since the coup d'état of 1991 has reportedly been the target of a number of violent episodes involving the security forces.

47. Grave concern has been expressed about the upsurge in summary executions and suspicious deaths in Port-au-Prince during July 1993, when 36 cases were identified. According to the International Civilian Mission, the targets of these grave human rights violations are members of popular organizations and neighbourhood associations, but also simple citizens who had the misfortune to find themselves in the path of the killers. The principal authors of such executions are organized bands of armed crooks (malfaiteurs), the zenglendos, who act with complete impunity. They sow terror during the night in the poor areas of Port-au-Prince. In recent weeks, areas until recently spared, such as Canapé Vert, were the scene of violence and zenglendos terror. In some cases, according to eyewitnesses, those responsible for the executions are police or their civilian assistants. 5/

48. The Mission further reports that it is investigating cases of summary executions and corpses discovered at Arcahaie, Saint-Marc, Miragoâne and Fond des Blancs.

49. According to the International Civilian Mission, as of August 1993 to its knowledge not one presumed author of arbitrary execution had been arrested. While justices of the peace have, in several cases, proceeded to record the death and order the removal of the corpse, judicial inquiries do not appear to progress. 5/

50. The following violations of the right to life were reported to have occurred in Haiti in August 1993. 6/

51. On 16 August 1993, Andrel Fortune, a member of the Alliance des organisations populaires de Las Cahobas, was reportedly shot in the back by a soldier. He is said to have escaped two attempts to arrest him on 25 and 28 June 1993 following demonstrations in support of President Aristide, and to have since been in hiding.

52. On 9 August 1993, in the vicinity of Babiole, a driver for the Couronne distillery was shot by a uniformed member of the military who was riding a motorcycle. The driver was making deliveries in the area and was accosted by the soldier while behind the wheel of his truck. The soldier opened the door of the truck and fired three shots. Although he was taken by taxi to the General Hospital, he died as a result of his wounds.

53. On 5 August 1993, in Port-au-Prince, the bodies of three unidentified individuals were reportedly discovered riddled with bullets on Jean-Jacques Dessaline Boulevard. The same day, the body of Jeanjean Delbouin was discovered only yards away from the office of the International Civilian Mission; he had been shot and beaten, and his hands and feet were bound. Also that day, at around 4.30 a.m., armed men reportedly executed a 43-year-old businessman in the Bolesse district and beat his wife and 14-year-old son. Some of the attackers are said to have been wearing military helmets.

54. On 3 August 1993, at Carrefour Vincent, a band of armed civilians killed Antoine Joseph, aged 46, a street vendor. Moments earlier, the band had killed Mr. Joseph's neighbour, Adnor Larose, aged 47.

55. A wave of violence which swept over Haiti in September 1993 accelerated on 8 September immediately following a ceremony which took place to reinstate the mayor of Port-au-Prince, Evans Paul. Many of the violations are said to have been directed at supporters of President Aristide. Although the police are said to have been present, they reportedly did not intervene and did nothing to stop the violence.

56. According to the International Civilian Mission, over 60 killings or suspect deaths in Port-au-Prince were reported to the Mission in the month of September, and over a dozen were reported between 1 and 15 October 1993, although this is believed to be less than the total. Reportedly, the Mission's investigation into such violations afforded increasing evidence of targeted political assassinations carried out by paramilitary groups linked to the Haitian Armed Forces or by members of the Armed Forces themselves. It furthermore reported that, "While up to August, two thirds of those reported to have been abducted reappeared, from September onwards those who disappeared were either found dead or remain disappeared" (A/48/532/Add.1, paras. 2 and 8).

57. On 11 September 1993, Antoine Izméry, a prominent supporter of President Aristide, was murdered by gunmen after being dragged from a church. He had been attending a memorial mass at the Church of the Sacré-Coeur in Port-au-Prince to commemorate the 11 September 1988 massacre at Saint-Jean Bosco church, the parish church of Father Aristide.

58. Further to its investigations, the International Civilian Mission concluded that "the assassination was a carefully planned and orchestrated commando-style operation, involving the Forces Armées d'Haiti (FADH) and their agents, who carried out the execution with complete impunity". Reportedly, at least five armed men entered the church during the memorial service, at around 9.25 a.m., put a gun to Izméry's head and marched him outside. When they got him to the street, they forced him down on his knees with his hands behind his head. By this time he was surrounded by a dozen armed men. A man identified by some witnesses as Gros Fanfan, a former Macoute known to be an attaché leader, then approached Izméry and shot him twice in the head at point-blank range. A second victim, Jean-Claude Maturin, was killed nearby, apparently because he had become an inconvenient witness. The group charged with carrying out the assassination included at least 15 people. Witnesses identified some of them, in particular one FADH officer, one man who had been recognized as a torturer in a clandestine detention centre a short time before and several attachés. The group was equipped with automatic handguns and hand-held and mobile radio equipment. The attack itself was well-coordinated and aimed solely at Izméry. The church grounds and the adjacent street were placed under the control of armed men, who violently dispersed passers-by. Other armed men, some carrying machine-guns, blocked traffic in order to create a controlled outer zone for the execution. The killers benefited from the complicity and support of the security forces (some of them in uniform) present at the scene. For instance, the assassination team arrived and departed the scene protected and escorted by police vehicles. The group that

assassinated Antoine Izméry is part of a much larger permanent clandestine structure in which FADH members participate and which counts on the active support of political groups opposed to the return of President Aristide and on considerable logistical and financial support. According to the International Civilian Mission's investigations, several members of the group who executed Antoine Izméry are implicated in the organization of "private militia" or "paramilitary groups in Port-au-Prince" (A/48/532/Add.1, Appendix).

59. On 14 October, the Minister of Justice, Guy Malary, was shot and killed in Port-au-Prince. His driver, one of his bodyguards and an unidentified fourth person believed to be a second bodyguard were also killed. Heavy assault weapons are said to have been used in the attack, which is believed to have been carried out by attachés. The Minister was closely involved in the implementation of the Governors Island Agreement and had recently presented to Parliament a law establishing a new civilian police force separate from the Haitian Armed Forces.

60. Nearly all the cabinet ministers who were sworn into office in September 1993 are said to have received death threats from civilian gunmen who have links to the police and the army.

61. Furthermore, members of the Mission and persons in contact with it are said to have been subjected to acts of intimidation and even provocation.

62. The following violations of the right to life were reported to have occurred in October 1993: "Edouard Dil, an active supporter of President Aristide, was killed in the evening of 25 September in the neighbourhood of Canapé Vert by four armed men who fired several times at the victim while deriding his political sympathies; Martial Milord Aurélus, an activist of the Organisation populaire de Bolosse in Carrefour, was abducted on 26 September by armed men. His body was found some hours later on the Route de Pharnal: his hands were tied behind his back and he had been killed with a bullet in his left temple. His funeral took place on 4 October, when four other activists of the same organization, including its secretary-general, were abducted by armed men. At the time of writing, their fate was unknown. Inés Dormé, the mother of an activist of the Comité Jeunes pour Volcy in Cité Soleil, was killed by armed men who were looking for her son late in the evening of 28 September in rue Volcy, Cité Soleil. Inok Lorsius, a supporter of President Aristide, was taken away from his home near the Port-au-Prince cemetery in the evening of 29 September by seven men with automatic weapons in a red pick-up with government plates. His body with several bullet wounds was found early the next morning in the rue Joseph Janvier. Carlo Altidor was killed on 4 October when he was shot twice from a vehicle without plates in rue Marcajoux; he had been the object of repeated threats after an article had appeared in his name in the pro-Aristide Creole weekly Libète. Ronald Cadet was killed by armed men at Delmas 24 on 9 October; he was an activist in the youth organization Comité Jeunes pour Volcy in Cité Soleil, and was the object of active repression by the Cité Soleil police. Another active member of the same organization, Fricko Otess, was killed on 10 October (A/48/532/Add.1, para. 5).

63. The Special Rapporteur received information concerning violations to the right to life which were said to have been carried out in November and December 1993 and January 1994. The violations included the death by strangulation of a young girl whose body was found on 25 November 1993 in Bélaéc. On 7 December the body of a 25-year-old woman was found in rue Chacéron. The same day, the body of a young man was found in rue St. Martin bearing signs of strangulation. On 14 December 1993 in Bicentenair the body of a young man who had been strangled was found in front of the National Theatre.

64. On 10 January 1994, the body of an unknown man was found on the Route National, and the body of another man was found in front of the Marche Tet Bet, his arms and feet bound. The same day, Joseph Mompremier, a member of the Front Militant Reuni, was forced from a car by heavily armed men dressed in jackets with "police" inscribed on the back, and shot in the head (Point Info, 14 January 1994).

65. It has further been brought to the attention of the Special Rapporteur that some Haitian asylum-seekers forcibly returned to Haiti have been arrested upon their return and taken into police custody.

66. These acts of violence committed by the armed forces, the police and their civilian accomplices constitute violations of article 3 of the Universal Declaration of Human Rights; article 4, paragraph 1, of the International Covenant on Civil and Political Rights; article 4 of the American Convention on Human Rights; and article 19 of the Haitian Constitution.

C. Violation of the right to protection against arbitrary arrest and detention

67. Wide-scale arbitrary arrests and detention, almost always accompanied by torture or other ill-treatment, continue to be among the most persistent violations carried out in Haiti. Victims are frequently people targeted for their political activities or opinions and include anyone suspected of supporting President Aristide, students, journalists, human rights activists, priests, nuns, rural and community leaders and anyone else involved in opposition activities. The majority of arrests are reported to be made without a warrant between the hours of 6 p.m. and 6 a.m. for the arrest of people not caught *in flagrante delicto*. Although the Constitution requires that anyone arrested be brought before a judge within 48 hours, in practice detainees are regularly held for days or weeks without having been brought before the authorities, and are commonly interrogated without legal counsel being present.

68. On 25 February 1993, Sensi Joseph was reportedly arrested on rue Lamarre by soldiers, after a United Nations vehicle dropped him off in front of his home. According to the victim, 30 other people were arrested the same day and taken to the Anti-Gang Investigation Service. All those persons are said to have been beaten and imprisoned for the night. 7/

69. Children have not been immune from arbitrary arrest and ill-treatment. On 26 February 1993, a 13-year-old boy is said to have been arbitrarily detained in Cité Soleil, Port-au-Prince, by persons suspected to be members of

the army, and held incommunicado from his relatives, who reportedly could not get any information about him. On 17 March 1993, Erneus Jean Audelin, a student at the Faustin Soulouque school, is said to have been detained for no apparent reason at Petit-Goâve by members of the military. In early March, at Jérémie, a number of youths are said to have been arrested and beaten by the military, and on 18 March, in Port-au-Prince, soldiers are said to have launched a large-scale operation against street children and vendors who sleep outside buildings. The soldiers reportedly hit the victims with clubs and a 14-year-old is said to have suffered a fractured skull after being beaten while he slept.

70. Supporters of President Aristide are said to have been subjected to harassment and arbitrary detention at Môle Saint-Nicolas following the distribution on 30 March 1993 of leaflets and photographs of President Aristide and calls for a constitutional Government. A number of them are said to have been severely ill-treated, and others subjected to persecution by the military and forced to flee the area. One of them, Manistin Capricien, is said to have needed hospitalization following the torture to which he was subjected. According to information from the International Civilian Mission, members of the Mission went to Môle Saint-Nicolas and protested to the military commander of the district. The commander acknowledged responsibility for the violence, justifying it on account of the inefficiency of the judiciary and the need to use force in order to obtain information. 8/

71. On 31 March 1993, members of the military reportedly went to the Hinche home of Fritz Charlot Pauleus, allegedly the only member of the opposition to return to the region following the coup d'état in September 1991, and whom the authorities accused of being responsible for the above-mentioned distribution of photographs and publicity in favour of President Aristide. Not finding Fritz Pauleus at home, the military is said to have arrested his wife, Yvrose Simeon, a family member, Ilfrid Dorme, and a family friend, Alex Cameau. Two other persons (names given) are said to have been arrested on suspicion of having seen or spoken to Fritz Pauleus. Mr. Pauleus's mother reportedly went into hiding.

72. It has further been reported that the section chief of the first section of Savanne Carée, Lecompte Michaud, has arrested peasants and then demanded ransom from them for their release. Mr. Michaud has reportedly set up his home as a courtroom and private prison. In March, the section chief is said to have arrested a peasant named Tison and held him for three days in his private prison. The same treatment was reportedly meted out to a man called Jean from Kacoule. The authorities are said to have taken no measures to stop the illegal practices of this section chief and his large number of deputies. 9/

73. On 23 April 1993, Cajuste Lexius, Secretary-General of the Centrale générale des travailleurs (CGT), Phabonor Saint Vil, Secretary of CGT, and Saveur Aurélus, leader of an agricultural union at Gros-Morne, are said to have been arrested without a warrant by policemen from the 30th company who reportedly beat them as they were entering the offices of Radio Caraïbes in Port-au-Prince, where they were going to deliver a press release in support of a general strike scheduled for 26 April. While in police custody, they are

said to have been beaten severely with batons and kicked by policemen. On 26 April, they were reported to have been transferred to the Anti-Gang Investigation Service. Cajuste Lexius is said to have been unconscious for two days as a result of the ill-treatment inflicted upon him and, after being examined by an independent doctor at the request of the International Civilian Mission, was transferred to a military hospital on 27 April where he was reportedly held until 21 May, when he was released. Phabonor Saint Vil and Saveur Aurélus were released on 29 April. All three men are said to be in need of medical attention as a result of the ill-treatment to which they were subjected by the security forces, in particular C. Lexius who reportedly suffered kidney failure while in military custody and was put on dialysis. Other members of CGT are reported to have been arrested in late April.

74. During the first week of April 1993, it is reported that five peasants (names given) accused of being supporters of President Aristide were violently detained in the Plateau Central by members of the military forces and imprisoned. The arbitrary detention of supporters of President Aristide continued in the months of May and June. René Sylvéus Benjamin, of Pont Sondé, is said to have been arbitrarily arrested by members of the military for distributing photographs of President Aristide; reportedly, when Father Vernet of the Sacré Coeur parish intervened on his behalf, Father Vernet was subjected to ill-treatment. On 26 May, Lionel Félix was arrested and beaten, also at Pont Sondé, for the same reasons. He is said to have been taken to Saint-Marc prison where he was severely tortured. Norbert Lubin, Secretary-General of the Komite Katye Mom Kamari (KKMK) is said to have been brutally arrested on 16 June in Port-au-Prince by members of the military and tortured while in detention. He is said to have been released as a result of popular protests.

75. During July and August 1993, attacks on freedom of association and expression continued, as well as violations against personal security and physical integrity. Victims of human rights violations (several names given) are said, furthermore, to have been subjected to persecution to prevent them from bearing witness to the ill-treatment which had been inflicted upon them during detention. 10/

76. According to the International Civilian Mission, throughout September and the first half of October 1993 (before their evacuation), Mission observers continued to intervene in cases of arbitrary arrests, illegal detention and torture, including in the following cases. At Thomassique, Départment du Centre, an activist of the MPP was illegally arrested on 7 September in the presence of many witnesses by three soldiers in uniform. He was accused of preparing the return of President Aristide and was asked for the names of people who had participated the previous week in a meeting with the Mission, and was beaten severely in the street, then taken to the barracks, twice losing consciousness. He was released after six hours of detention; the Mission arranged for his medical treatment. At Gonaïves, Département de l'Artibonite, a leader of a popular organization who had been arrested on two previous occasions since the coup d'état was illegally arrested on 8 September by four members of the FADH and severely beaten with batons all over his body and on the head. He was accused of burning tyres and provoking demonstrations in June. He was released two days later as a result of the intervention of the Mission. At Petite Rivière de l'Artibonite, Département de l'Artibonite a

leading local member of the Front national pour le changement et la démocratie (FNCD) was arrested by a corporal without a warrant on 22 September. He was initially accused of throwing stones at a neighbour's house and then of involvement in the distribution of pro-Aristide leaflets, posting up photos of the President and "multiples désordres". While observers were on their way to make representations regarding his case on 24 September, he was beaten in his cell by the commander of the barracks, a corporal and an attaché. He was eventually taken before a judge on 27 September and provisionally released two days later. At Camp Perrin, Départment du Sud, a supporter of President Aristide was arrested by soldiers on 26 September and severely beaten both at the time of his arrest and after he had been taken to the military post. He was only transferred to prison at Les Cayes four days later, after the intervention of the Mission. The district military commander threatened in the presence of Mission observers that he would be killed. At Cap-Haïtien, Département du Nord, during the parade staged by the FADH apparently to celebrate the second anniversary of the coup d'état on 30 September, a young man was arrested and beaten in the street and in a military truck by attachés after he was suspected of making a remark in support of the return of President Aristide. He was further beaten severely by many uniformed members of the FADH and attachés inside police headquarters, and subjected to torture before being released (A/48/532/Add.1, para. 21).

77. It was further reported to the Special Rapporteur that, on 20 November 1993, soldiers arrested three youths from the shanty town of Raboteau, Artibonite Department who were in Port-au-Prince, beating them and taking them to the prison in Gonaïves. On the same day, a number of persons are said to have been beaten and arrested in Raboteau and their homes searched by members of the armed forces.

78. On 21 November 1993, members of the armed forces are said to have gone to the home of Romane Toussaint. Reportedly, when his mother, who was pregnant at the time, refused to give any information about her son, soldiers beat her severely with a baton, in particular in her stomach and arrested her (Amnesty International, 26 November 1993).

79. These arbitrary detentions constitute violations of article 9 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights, article 17 of the American Convention on Human Rights, and article 24 of the Haitian Constitution, which established that the State guarantees the freedom of the individual.

D. Violation of the right to protection against torture and other cruel, inhuman or degrading treatment or punishment

80. Torture and ill-treatment by the military, police and civilians working with them continue to be widespread and systematic in Haiti. Detainees are said to be routinely beaten upon arrest, some so severely that they require hospitalization; others have reportedly died in detention as a result of the torture to which they were subjected.

81. On 15 April 1993, Oriol Charpentier was arrested at Thiotte, accused of stealing from his employer's house and acquitted for lack of evidence by the magistrate, who apparently told him to go to the military authorities to

report his release. Some hours later the magistrate was called to the barracks to certify the death of Oriol Charpentier. The military authorities, the doctor who signed the death certificate and the prisoners who were present when the events occurred gave contradictory accounts of the circumstances and causes of death. Oriol Charpentier was hurriedly buried by the military, who refused to allow the body to be returned to the family.

82. On 3 May, the judge at Terrier Rouge certified the death in prison of Georges ("Andvil") Mathias and attributed his death to a chronic ailment. However, according to his family, Mr. Mathias was in good health before he was arrested on 23 April and accused of stealing cattle. He would appear to have been brutally hit by the attaché who arrested him. Georges Mathias was taken away and held initially at Trou du Nord and was only handed over to the local tribunal four days after his arrest. The judge at Trou du Nord declared himself incompetent to hear the case, and the prisoner was transferred to Terrier Rouge, where he appeared before the deputy magistrate on 29 April. The deputy magistrate then declared himself incompetent to hear the case and apparently ordered that Georges Mathias, who was unable to stand, should be taken to Fort-Liberté (A/47/960 and Corr.1, para. 24).

83. Those known or suspected of being supporters of President Aristide are at particular risk. On 11 February 1993, Clothaire Nestor, Philomène Senatus and Josamon Meyis were reportedly arbitrarily arrested at Savanette by soldiers accompanied by the local section chief and accused of being members of the Lavalas movement (supporters of President Aristide). On 12 February, Mrs. Richard Sineis was arrested in the village of Lagivas, in the same area; all four women are said to have been severely beaten and thrown into prison. Mrs. Sineis, who was reportedly pregnant and near to term is said to have become seriously ill following the treatment to which she was subjected.

84. On 25 February 1993, Monsignor Willy Romélus, Bishop of Jérémie, human rights advocate Paul Dejean, actor Marcel "Lobo" Casséus, grass-roots activist Emmanuel Jean-Louis and others are said to have been beaten and arrested outside the National Cathedral in Port-au-Prince by police and paramilitary agents as they left a memorial service for those who died in the sinking of the ferry Neptune. Reportedly, among those arrested by police and later released were two journalists and at least a dozen seminarians, some of whom are said to have been subjected to ill-treatment while in detention. One of them, Pharnes Jan, who was reportedly taken to the National Penitentiary, is said to have been so badly beaten that he needed urgent medical attention. According to the report of the International Civilian Mission, incidents took place throughout the ceremony and some of those present had to be evacuated under the protection of the Mission and foreign diplomats. On 5 March, Volvick Figaro, who was accused of having distributed political leaflets on the day of the mass, was arrested and severely beaten in a building of the Haitian customs (A/47/960 and Corr.1, para. 14 (a)).

85. On 3 March 1993, at 2 a.m., a group of armed men is said to have invaded and ransacked the house of Saint-Jean Servil on Avenue Pouplard in Port-au-Prince, beating his 73-year-old mother and beating and raping his wife. The men were reportedly enraged at finding photographs of President Aristide and leaflets about the Lavalas movement.

86. On 26 June 1993, the military is said to have entered the poor neighbourhoods of Polcos and Lòt Bò Kanal looking for members of peasant organizations. At least nine persons are said to have been severely beaten during the search and the homes of two popular leaders were reportedly looted.

87. On 28 June 1993, a 70-year-old man is said to have been arrested at his home by members of the military, beaten and taken to the military barracks. Reportedly, the man was arrested in the place of his son, who was sought by the military because he is the leader of a local community organization of Lòt Bò Kanal. He is said to have been released the following day.

88. In the North-East department, on 26 June 1993, Amelus Pierre, a 33-year-old farmer, was reportedly arbitrarily arrested for lack of respect towards a corporal and taken to the Capotille outpost, where he was severely beaten with blows from a machete, particularly on the neck, and subjected to torture. He was reportedly detained without charge for 25 days. He is said to have been released on 22 July by the government commissioner, following the failure of the military to present evidence for his arrest. As a result of the treatment to which he was subjected, Amelus Pierre is said to be in very poor health. 11/

89. It was further reported that on 7 August 1993, at Peroin, Mrs. André Claude died as a result of the torture to which she had been subjected in the office of a section chief named Edner Odeyid. She was reportedly arrested in place of her husband for political reasons. He is said to have been in hiding for nine months.

90. According to information received by the Special Rapporteur, on 15 September 1993, a group of masked attachés reportedly went to the home of the former President of the Electoral Council, considered sympathetic to the MPP and to President Aristide, and accusing him of favouring the return of the President, beat him with batons so severely that he required hospitalization.

91. At Hinche, Département du Centre, during the night of 12 October, eight men including an armed soldier went to the home of an active member of the Ti Legliz ("Little Church", which is associated with liberation theology and President Aristide). He was taken out and hit with batons and rifle butts. He was taken towards the river, continuing to be severely beaten, and eventually was able to throw himself into the river and flee. He was hospitalized, with the assistance of the Mission, in a critical condition, having lost most of his teeth and with open wounds to his head, ears and stomach (A/48/532/Add.1, para. 21 (c)).

92. Those acts of torture and physical punishment constitute violations of article 5 of the Universal Declaration of Human Rights; article 7 and article 10, paragraph 1, of the International Covenant on Civil and Political Rights; article 5 of the American Convention on Human Rights; and article 25 of the Haitian Constitution.

E. Violation of the right to freedom of assembly and association

93. The Haitian military authorities have continued to engage in human rights violations with a view to prohibiting groups from exercising their right to freedom of assembly and association. Peaceful demonstrations in support of President Aristide have been broken up, often violently, by members of the armed forces, and frequently the participants arrested and subjected to ill-treatment.

94. On 29 March 1993, the anniversary of the adoption of the 1987 Constitution, a peaceful demonstration in support of the constitutional President is said to have been violently repressed at Gonaïves. Other similar demonstrations took place in that town on 21 April, on the premises of the Lycée Fabre Geffrard, and on 11 May in the street. These were also reportedly accompanied or followed by attacks by soldiers on demonstrators or onlookers (A/47/960 and Corr.1, para. 14 (b)). One of the organizers of the first demonstration is said to be in hiding, and one of the demonstrators of 21 April was reportedly arrested, severely beaten and detained for several days before the International Civilian Mission was allowed to see him. He is said to have been taken to court and released on 1 May. 12/

95. On 28 April 1993, members of the Mouvement paysan de Papaye (MPP) reportedly affixed posters of President Aristide on the walls in the town of Hinche, on the occasion of the twentieth anniversary of MPP. During the night of 28 to 29 April at about 2 a.m., a member of MPP, Hilton Etienne, is said to have been arrested without a warrant at his home by a gang led by members of the security forces. At least three other alleged members of MPP were arrested the same night. According to the security forces, they were arrested in the act of illegal association with the intent of disturbing the public order. They were later released. Mr. Etienne, however, is said to have been brutally beaten upon arrest and during his detention. As a consequence, his left wrist was broken and he suffered multiple contusions (A/47/960 and Corr.1, para. 14 (e)).

96. On 20 May 1993, Jeanne Pierre and Fritz Jean, members of a youth organization at Mirebalais, were reportedly arrested for having held a youth meeting. On 30 May 1993 at Gros Moulin, Lascahobas, Antonine Noël is said to have been arrested by the section chief and subjected to severe ill-treatment for having organized an illegal meeting: a game of dominoes. He is said to be in poor health as a result of the torture to which he was subjected. On 22 and 23 June, the military is reported to have violently dispersed a demonstration in favour of President Aristide at Raboteau. On 25 June, they are said to have prevented a gathering from taking place at Lòt Bò Kanal, severely beating a man they found waiting for the demonstration to begin.

97. On 27 June 1993, in commemoration of the patron saint of Haiti, a number of gatherings are said to have taken place in Port-au-Prince and the surrounding areas, mostly of a religious nature. At the end of a mass in the church of Notre Dame du Perpétuel Secours in Port-au-Prince, a number of people were distributing tracts and leaflets in favour of President Aristide. This reportedly elicited a violent reaction from the soldiers around the church and their civilian supporters; a little girl is said to have received a bullet wound in the leg and a number of people, including an elderly man, are

said to have been severely beaten. Seven persons are reported to have been captured and taken to the Anti-Gang Investigation Service, where they are said to have been beaten. One of them, Nickson Desrosiers, coordinator of the Plateforme Fort Saint-Clair, reportedly required urgent hospitalization as a result of the torture to which he was subjected. Members of the International Civilian Mission are said to have been denied access to the detainees by the military authorities.

98. According to information received on 28 June 1993, after the police broke up a demonstration in support of President Aristide in Cité Soleil, Vesnel François, a member of the Platform Organizations in Cité Soleil, is said to have been arrested and so severely beaten by the police that he was unable to stand and required hospitalization. It is further reported that a journalist from Radio Tropique FM and a photographer from the weekly Haïti Progrès, who were covering Vesnel François' appearance before the police-court magistrate on 1 July, were physically attacked by police and armed civilians and their photographic material confiscated.

99. On 29 June 1993, at Zabricot, 13 persons, most reportedly members of MPP, were arbitrarily arrested following a demonstration against the return of the section chief. The persons concerned are said to have been accused of participating in an unauthorized demonstration with a view to disturbing the peace, and taken to the barracks at Hinche, where they were reportedly beaten and subjected to particularly cruel treatment.

100. On 10 July 1993, 50 soldiers are said to have broken up a demonstration in Port-au-Prince in support of President Aristide, arbitrarily arresting and beating a number of participants.

101. The Haitian authorities are thus systematically violating article 20 of the Universal Declaration of Human Rights; article 21 of the International Covenant on Civil and Political Rights; articles 15 and 16 of the American Convention on Human Rights; and article 3 of the Haitian Constitution.

F. Violation of the right to freedom of opinion and expression

102. The right to freedom of opinion and expression has been severely curtailed in Haiti since September 1991. Print and broadcast journalists have continued to be subjected to threats and acts of intimidation with a view to preventing them from going about their work, especially when covering events in which human rights violations have taken place. According to the International Civilian Mission, radio journalists in the Artibonite Valley and at Fort-Liberté and Miragoâne have been the subject of acts of intimidation, threats or detention by elements of the armed forces or persons acting on their orders. The authorities are pursuing a strategy aimed at silencing the provincial media. Several regions are now virtually without press or radio. Twenty months after the coup d'état and three months after the installation of the Mission, no real improvement is evident in terms of freedom of expression in this sector. Many radio stations which had to interrupt their programming after the coup d'état are still closed down, while others have stopped or have

restricted the broadcasting of news. A large number of journalists have had to stop working, and several have been forced to live in hiding. Vendors of Libète, the pro-Aristide Creole newspaper, are regularly subjected to harassment, especially in the provinces (A/47/960 and Corr.1, paras. 20-21).

103. According to information received by the Special Rapporteur, Arlette Josué, a journalist at Signal FM and a Voice of America correspondent, was detained on 25 February 1993 as she was leaving the funeral mass held at the cathedral in Port-au-Prince and taken to the Anti-Gang Investigation Service, where she is said to have been subjected to ill-treatment and accused of having sung a subversive song during the mass.

104. During the night of 10 April 1993, three persons, including Ernst Ocean, a law student and correspondent for Radio Tropique at Saint-Marc, were reportedly arbitrarily arrested, severely beaten, and taken to the Saint-Marc military barracks for having distributed pamphlets supporting President Aristide. Ernst Ocean is said to have been released the same day. According to information received by the Special Rapporteur, it would appear that the interest shown by a member of the International Civilian Mission contributed to securing his release.

105. On 9 June 1993, Pierre Paul, a peasant living in Plateau Central, is said to have been arrested by the section chief at Malanga for having expressed his satisfaction at the announcement of the resignation of Prime Minister Marc Bazin; he was reportedly tortured severely before being released. It is further alleged that, after having written an article about a popular demonstration at Léogâne on 27 June, the journalist Marius Emmanuel had to go into hiding to escape reprisals and persecution by members of the military in Léogâne.

106. Many people are said to have been subjected to harassment and ill-treatment and forced to abandon their homes for fear of reprisals for distributing leaflets in favour of President Aristide, having written or uttered slogans, having in their possession photographs of President Aristide, or for listening to foreign radio broadcasts.

107. On 11 June 1993, at Pérodin, 10 members of the peasant organization Rassemblement des paysans (names given) are said to have been captured, ill-treated and incarcerated, on charges of possessing subversive documents. Reportedly, the persons concerned were subjected to torture and released several days later on bail. Other members of the same organization are said to have been forced to leave the region.

108. On 24 June 1993, in Port-au-Prince, several days after the management of the newspaper Libète announced that they had received threats, a number of street vendors of the newspaper were reportedly captured, beaten and detained at the Anti-Gang Investigation Service for several hours (four names are given). The street vendors of the same newspaper are also said to have been detained and subjected to ill-treatment by security forces in February 1993.

109. On 29 and 30 June 1993, a journalist from Radio Métropole is said to have been summoned to police headquarters after broadcasting information on the negotiations taking place on Governors Island.

110. Such actions are contrary to international norms and constitute violations of article 19 of the Universal Declaration of Human Rights; article 19 of the International Covenant on Civil and Political Rights; article 14 of the American Convention on Human Rights; and article 28 of the Haitian Constitution.

III. THE MAIN PARTICIPANTS IN THE HAITIAN POLITICAL PROCESS

111. The Haitian political crisis since the coup d'état of September 1991 has been characterized by a complex set of factors and interests and by the active involvement of many participants, both domestic and foreign. The main domestic participants in the Haitian crisis are in fact the military and its allies, on the one hand, and Aristide and his followers on the other. Throughout the crisis, real and final decision-making power in the de facto Government has remained in the hands of the military, even though that group has always tried to appear apolitical and has taken responsibility in only a few cases. The only talks since the coup d'état that have yielded any relatively concrete results have been those attended by the military, such as the latest ones at Governors Island, New York.

112. The various domestic participants interpret and describe the situation in different ways. For example, the military and its allies accuse Aristide and his Government of human rights violations, intolerance and disregard for other branches of Government; to justify the "need for a strong Government" they invoke the cultural and structural problems supposedly involved in the practice of democracy, brandish nationalist flags and call themselves the champions of sovereignty, insisting daily that the international community has increased the Haitian people's suffering from abroad by applying restrictive measures. Aristide and his followers, meanwhile, point to the illegitimacy of the de facto Government, the persistence of serious human rights violations since the coup d'état, the stagnation of all social programmes and structural reforms, the disregard for the popular will and the gradual impoverishment and decline of the Haitian people.

113. The foreign participants, for their part, have justified their presence or acted in the crisis on the basis of their commitments to defend human rights, the problems they face as a result of clandestine immigration, international commitments for the defence of democracy, such as the implementation of resolution AG/RES.1080 (XXI-0/91) of the OAS General Assembly or the resolutions adopted by the United Nations General Assembly and Security Council or the Ad Hoc Meeting of Ministers for Foreign Affairs of OAS, etc. The means employed by these foreign participants have ranged from nothing more than unimplemented economic sanctions to embargoes and other relatively effective measures, from formal statements to the signing of relatively valid, official agreements, from ignorance or denial of the obvious to the acknowledgment of outright lies, and from threats of force to overuse thereof.

A. The main domestic participants

1. The military and its agents

114. The military has played a predominant role in Haitian politics. First, for a long period in the country's history, it held power directly; subsequently, under Duvalier, it worked alongside the tontons macoutes, to ensure the regime's stability. Most recently it has acted overtly, making and breaking Governments. The military has always been the power behind the scenes, although only occasionally has it been seen to wield power directly. Its traditional ally has been the Haitian bourgeoisie, to which it is linked by social origin and by economic and political interests. It has consolidated its power not only through a monopoly on weapons but also through various features of the country's structure and political process: the lack of legitimate and trustworthy civilian leadership; the weakness of the political parties; the continued existence of the old institution of section chiefs, who depend on the military, report to it and respect it; the fact that military, police and prison-guard functions are all vested in the military; its ability to practise repression with impunity; its privileges, established by law or simply acknowledged in practice; and the wealth its members acquire through illicit trade, smuggling, customs duties and even airport taxes. An illustration of its immense political power is the fact that in the last seven years alone the military has been the main player in the following far-reaching political events: it overthrew Duvalier in 1986; it prevented, through repression and violence, the 1987 elections from taking place; it sought to legitimize its power through elections whose results it later disavowed, ousting through a palace coup first Manigat and then his successor, General Namphy, in 1988; it installed General Avril in power and later sent him into exile; forced by heavy international pressure it had to accept Mrs. Trouillot's Government in 1990, it later sought new civilian allies in the election late in that year. The unexpected outcome of that election, which Aristide won, once again led the military to halt the political development process by the coup d'état of September 1991. Since then it has exercised absolute power, and while it has for some time installed civilians as President of the Republic and Prime Minister, they have held these offices in appearance only. More recently, there have been new demonstrations of the military's power: it installed Marc Bazin as Prime Minister; one year later it did not agree to changes in his cabinet and Bazin was forced to resign. Following Bazin's resignation in June 1993 the military did not appoint any other apparent Head of Government, but began to run it without intermediaries. Another event that is revealing of the military's political power is the fact that only towards the end of the negotiations, when General Cédras became directly involved and signed the Governors Island Agreement, was there any hint of a solution to the Haitian political crisis. Subsequently, the repudiation by Cédras and the Haitian military leaders of the commitments undertaken in the Governors Island Agreement caused the political crisis to take a further turn for the worse. At the time of writing this final report, there have been no viable new proposals for overcoming the crisis which has existed since October 1993.

115. The armed forces of Haiti number approximately 7,000, of whom the vast majority are based at Port-au-Prince, with over 5,000 performing what is essentially police work. They are in fact more a police force than a military

force in the technical sense of the term. One might say that they form a vast repressive machine which enjoys the logistical support, aid and complicity of civilians acting under their orders: the tontons macoutes, the section chiefs, the assistants and their militia, the attachés and the armed gangs called "zenglendos", etc. These groups or gangs operate under the direction of the military, which arms and protects them, and act with complete impunity. Since October 1993, when the military decided to repudiate the Governors Island Agreement, prevent the return of President Aristide and intensify the repression, these paramilitary groups have acted openly, committing all kinds of crimes and abuses. The country has thus become a territory occupied by criminal gangs (the tontons macoutes, the attachés, the zenglendos), lawless groups who sow terror, use vehicles and weapons supplied by the military and act with absolute impunity. In Haiti, any citizen may, at any time, in any place and without any reason or explanation, be murdered, arrested, beaten, tortured or abducted without trace.

116. According to its organizational structure, the command of the Haitian armed forces is supposed to be a collegiate body in which responsibilities are shared; in reality, however, instructions come from certain officers who exercise leadership and have greater power. For example, there is no doubt that throughout the crisis since the overthrow of President Aristide's Government, orders and instructions have come largely from two military-police chiefs: General Raoul Cédras, Commander-in-Chief of the Armed Forces of Haiti, and Colonel Michel François, head of the Port-au-Prince military command and also chief of police. Observers and analysts of the Haitian process agree that there is no unanimity of viewpoint or position among the military leaders and that there is an underground struggle for power among the highest-ranking officers. Nevertheless, they have so far concentrated all power in their hands without open confrontations.

117. The Constitution of Haiti stipulates that the armed forces and the police are separate institutions in terms of both their structure, command and membership and their role in society. A bill setting out this constitutional norm of separation of powers had been drafted and submitted for consideration by the Senate while President Aristide was in office, but discussion and adoption of the bill was deferred by the coup d'etat.

118. One of the points of both the Governors Island Agreement and the New York Pact is the separation of the police from the armed forces. The programme of modernization of the Haitian armed forces was also covered in the Pact. But as is well known, it has not been possible to take any action on this owing to the repudiation of the agreements by the military.

119. It should be noted that, in accordance with articles 264-2 and 264-3 of the Haitian Constitution, the Commander-in-Chief of the Armed Forces is chosen from among the current officers in service holding the rank of general and has a mandate of three years which can be renewed. General Cédras was appointed to the post by President Aristide in March 1991, replacing General Abrahams, although he was not confirmed by the Senate until after the coup d'état. However, the Governors Island Agreement had provided for the resignation of General Cédras as Commander-in-Chief of the Armed Forces. Provision was also made for Colonel Michel François to leave his post as chief of police.

Aristide's choice of the persons who would occupy these posts was seen as one of the fundamental and most delicate points of what, up to October 1993, was hoped would be the beginning of his government of national reconciliation.

120. If the clauses of the Governors Island Agreement had actually been put into effect, and especially the separation of the police and military functions, the modernization of the armed forces and the elimination of the paramilitary bodies not only in law but above all in practice, vitally important changes in Haitian policy would have been achieved. In the New York Pact concluded on 16 July 1993 between the Presidential Commission and political parties, it was agreed that a law would be enacted to ban the paramilitary bodies. But as is well known, in October 1993, when the resignation of General Raoul Cédras as Commander-in-Chief of the Haitian Armed Forces and the departure abroad of Michel François, the chief of police in Port-au-Prince, were scheduled, the situation suddenly changed. The Haitian armed forces continue to exercise complete power.

2. President Aristide and his supporters

121. Aristide was a political phenomenon in 1990. He finished first in the presidential race despite having been the last candidate to enter. He took on the traditional parties by means of a heterogeneous movement called Lavalas (The Avalanche), which in a very short time managed to mobilize the masses to an extent unprecedented in Haitian history. He came to power with neither a defined programme nor an administrative team, much to the astonishment of all, including possibly even himself and his supporters. His social experience had until then been as a priest of the "petite église" (popular church) in his parish, as an activist protesting against injustice and as the founder and organizer of an excellent programme to assist children in the poor neighbourhoods of Port-au-Prince in the "La Famille, c'est la Vie" homes. A charismatic public speaker, yet calm and reserved in private, this soft-spoken, well-educated man managed to win the hearts of the overwhelming majority of Haitians, particularly the poorest in all regions of the country. The love and the credibility he has inspired among the people are also the result of his tireless struggle against "macoutism", that is, the injustices and cruelty of the repressive system created by Duvalier, whose direct and daily victims have always been the poorest groups in society: the rural population and the inhabitants of the poor urban neighbourhoods. Aristide obtained 67 per cent of the vote in the 1990 election, which had the highest turnout in Haiti's history, and he has maintained this immense popularity throughout his more than two years in exile, despite the campaign to discredit him waged by the de facto Government and other interested groups. Throughout this period of exile, the armed forces have routinely persecuted, beaten and even killed persons found to be supporters of Aristide or even found to have a picture of him. Nevertheless, in poor homes and neighbourhoods the people continue to defy danger and punishment by displaying pictures of "Titid" (as he is popularly known) in increasing numbers. Even when the Special Rapporteur visited Haiti in July and August 1993, after the signing of the Governors Island Agreement, it was still a serious offence to have in one's home or display a picture of Aristide. The armed forces not only arrested and beat anyone who affixed such pictures to walls or posts, but also made the person take them down and eat them.

122. The Lavalas movement began not as a party but as a groundswell that carried everyone with it: the rich, the middle class and the rural and urban poor; liberals, social democrats, communists and independents; Catholics, Protestants, voodooists and members of every religion and sect, including of course, most particularly, the priests of the popular church and their vast following, as well as social activists with no ideological or religious commitment. Almost from the beginning, it galvanized the people, excited them and inspired hope. Never before in Haiti had there been a popular movement of such breadth and depth.

123. President Aristide's election victory immediately created a broad front of opposition, composed of the traditional political leaders and their weak political organizations and parties, reacting to the emergence of an electoral phenomenon that diminished them even further and reduced their political influence; the armed forces, traditional allies of the oligarchy and the real power, which felt particularly threatened when Aristide made a number of major changes in the high command at the time of his inauguration; the bourgeoisie, who feared popular action in the absence of any clear programme of government and any structures or organization of the mass that had supported Aristide and were calling for the satisfaction of basic needs; the former tontons macoutes, who felt their physical integrity threatened; members of Parliament from various parties who together constituted a majority in the Chambers and who rebelled against some of the positions taken by Aristide, who did not always abide by the legal precepts that govern relations between the President and Parliament; and, lastly, the Church hierarchy, which felt threatened by the power of the priests of the popular church and by popular uprisings such as the ones that had taken place in January 1991.

124. President Aristide formed a Government made up of people whose administrative and political knowledge and experience were no greater than his own. He dismissed or failed to recognize the dangers involved and made no attempt to establish good, stable relations with hostile sources of power. He made serious political errors that gave further impetus to the creation of a powerful opposition front in a country with no experience of democratic politics. It is likely that the popular uprising that had thwarted the Lafontant coup d'état in January 1991 convinced Aristide that the support of the masses was in itself sufficient to ensure stability and protect his Government. The events of September 1991 would prove him wrong.

125. Analysts agree that President Aristide has learned much in these two years of exile and political negotiations. He is now capable of controlling the more radical of his supporters. His new programme, rhetoric and positions and the people he has chosen to form the Government of national reconciliation reveal a politician who is capable of coping with the difficult circumstances he will have to face during the remainder of his term and adjusting to the rules of the democratic game.

3. Parliament and the political parties

126. In Haiti, political parties could not be established or operate freely until the overthrow of the Duvalier regime in 1986. They were further weakened by the fact that many party leaders at that time had cooperated with the Duvalier Government at some time in their lives. Confrontations between

the leaders and their parties during the transition years from 1986 to 1990 ultimately harmed some parties, led to the founding of others, created strange coalitions and, in general, brought further weakening. All of this contributed to the resounding victory of Jean-Bertrand Aristide and his Lavalas movement in the December 1990 election. Nevertheless, some recently formed parties such as FNCD and KONAKOM supported Aristide during the election, while he was in office and afterwards, through everything that happened in Haiti after the coup d'état.

127. Some political parties and many members of Parliament have played an unusual role in the crisis, forming a tactical alliance with the military which became a "legal" obstacle to Aristide's return. In the days following the coup d'état, they appointed "President" Nérette and "Prime Minister" Honorat for the obvious purpose of legitimizing the action of the military. During the Cartagena talks they refused to acknowledge Aristide's investiture. They sabotaged the implementation of the Washington protocols. They appointed Marc Bazin Prime Minister with the approval of the military and bitterly opposed the negotiations mediated by OAS, the United Nations and Special Envoy Dante Caputo. And they have taken every opportunity to make it known that they do not want Aristide to return.

128. The New York Pact, signed on 16 July 1993 after the Governors Island Agreement, required the political parties to change their attitude, calling on them to recognize Aristide, observe a political truce and pass a number of laws in Parliament, including a law on the separation of the police from the armed forces. None of this has been done by the Haitian Parliament.

4. The Catholic Church

129. Haiti is a deeply religious country. The Catholic Church in particular has played a major role in the development of the Haitian people. It was a fundamental factor in the liberation struggle that culminated with the proclamation of independence in 1804, and it has continued to exercise great influence throughout the history of the Republic. In recent decades, under the Duvalier regimes (1957-1986), a new relationship between the Catholic Church and the Government evolved. François Duvalier used the Haitian clergy to bolster his political activities, consolidate his regime and protect his interests. After the fall of Jean-Claude Duvalier in February 1986, the Catholic Church adopted a policy of discretion and of not intervening openly in politics. Since then, it has been preoccupied with maintaining its unity, which is constantly threatened by the intense social and political activities of the proponents of liberation theology and the leaders of the popular church. While the Church hierarchy, through the Haitian Episcopal Conference (CEH), had in fact called for greater social involvement by the State, it remained relatively aloof from the political crisis and its consequences during the Governments that followed the fall of Duvalier up to the 1990 election. Following the burning of the cathedral and the Nuncio's residence in January 1991, violent incidents attributed at the time to Aristide supporters, and many public differences with the Government, the Catholic Church has adopted an attitude of open opposition, as well as of caution and self-defence in the face of real and presumed threats and the other difficulties in which it has become caught up.

130. Viewpoints and positions differ within the Church hierarchy itself with regard to the Government that has emerged from the military coup of 29 September. Although one faction appears relatively passive and even complacent about the de facto Government, another has actively denounced and opposed it. The open and determined opposition to the military Government within the Catholic hierarchy is led by the Bishop of the Haitian town of Jérémie, Monsignor Willy Romélus. It will be recalled that Monsignor Romélus was beaten on 25 February 1993 by mobs apparently sent by the military to create a disturbance. The incident occurred as the prelate was about to finish helping to empty the cathedral of the participants in a mass in memory of the victims of the wreck of the Neptune ferry which had turned into a pro-Aristide demonstration.

131. A fact that says much about the Church's attitude towards the de facto Government is that, since the military coup, the only State to recognize the military Government and maintain unbroken diplomatic relations with it has been the Vatican. Moreover, the Haitian Episcopal Conference, unlike the priests who support Aristide, has severely criticized the sanctions imposed by the international community on the de facto Government. On 27 April 1993, the Conference condemned the OAS trade embargo as "inhumane and disastrous" and also condemned the possibility of military action.

132. The popular church is a nationwide phenomenon. The hierarchy, however, maintains its representativeness and its authority. For this reason, the role and attitude the Catholic Church assumes in the coming months, once the legitimate Government of President Aristide has been restored, together with the relations that develop between the Government and the hierarchy, will have a significant impact on the recovery process. Although the Church hierarchy has not intervened directly in the talks to resolve the crisis and has not to date made any commitment with respect to its role in the transition process, one hopes that it will use its influence to promote political and social stability and a return to democratic normalcy. It should also help to bring about the anticipated institutional changes.

133. Following the repudiation of the Governors Island Agreement and the return of violence and repression in Haiti in October 1993, the Catholic Church has adopted a much more critical stance towards the Haitian military regime.

5. The Haitian middle class

134. What can be called the Haitian bourgeoisie is made up of a minority of the population that is, however, economically powerful and dominates the import/export trade, plantation agriculture, the country's nascent industry, and services. Some members of this group have been able to send their children to study at foreign universities, particularly in the United States of America and Europe, and have unquestionably set themselves up as a sort of social and even intellectual élite. In a country characterized by great poverty and an absence of professional training, this social group is truly a privileged one. Unfortunately, it has not worked independently to promote democracy in politics but has always remained more closely allied with the dictators and the military than to the people. It has consequently become a social sector dependent on the armed forces, basically engrossed with its own

affairs and concerned with preserving its privileges. The recurrent economic straits in which the Government has found itself have on occasion led this middle class to pay the salaries of the police and the armed forces, thus making them a kind of "praetorian guard". While Aristide was in office, most members of the middle class strongly opposed him, and analysts have speculated that the middle class, or at least a large proportion of it, was a determining factor in the overthrow of the constitutional Government in September 1991. It probably viewed the electoral victory and, subsequently, the Aristide Government as a challenge and even a threat to its traditional privileges.

135. In time, however, the bourgeoisie also became a casualty of the Haitian political crisis that followed the coup d'état. First the embargo and then the blockade, together with the cutting off of trade and foreign investment and the suspension of aid and cooperation programmes, compounded by the political tensions, violence and uncertainty experienced under the de facto Government, spelt danger and difficulty for the business and the interests of this group. This is why the Haitian middle class, too, finally became interested in resolving the political crisis that it had helped to create. It must be said, nevertheless, that until the eleventh hour this group had been resistant to a political settlement. The middle class always feared the prospective return of Aristide as a President and a leader able to impose his will and even, by appealing to his followers, to impose policies through demonstration of popular support. Only when the negotiations had reached a certain point did the middle class begin to change its position and, finally, accept a return to democracy, but always on condition that it would have a "weakened", "neutralized" Aristide who would work with the bourgeoisie and other interest groups in the country to carry out a moderate programme without any further political changes. Aristide's June 1993 meeting in Miami with a cross-section of businessmen, many of whom had encouraged and even financed the coup d'état, reflected this change of heart. On that occasion the Haitian businessmen and Aristide agreed on new rules to be followed when democracy was restored and the President returned. Moreover, the middle class made clear throughout the negotiations that it wanted the military officers involved in the coup d'état to be given amnesty and the armed forces to retain their long-standing hold on power. The middle class thought, and probably continues to do so, that any possible or conceivable weakening of the army would upset the balance of power and thereby threaten to plunge the country into anarchy and widespread violence.

136. Aristide's designation of Robert Malval as Prime Minister in August 1993 and his acceptance by economic groups and by the armed forces were interpreted as a sign that an understanding had been reached between the President and the Haitian bourgeoisie. However, the subsequent difficulties experienced by Malval in installing his Government and putting it to work showed that the armed forces were not confident either that the economic groups could have a voice and make themselves heard under a regime headed by Aristide. Since at least the Haitian military leadership has imposed a veto on the person of Aristide, it does not matter whom he governs with or how.

B. Foreign participants

1. The Organization of American States and the United Nations

137. The Organization of American States (OAS) and the United Nations have played an important role in Haitian political life in recent years.

138. First, representatives of OAS and the United Nations were present as observers during the voting that led to the election of Jean-Bertrand Aristide as President of the Republic of Haiti in December 1990. Then, on the basis of the principles laid down in its Charter and in the Santiago Commitment to Democracy and the Renewal of the Inter-American System, the General Assembly of OAS, at its twenty-first regular session, held at Santiago, Chile, in June 1991, adopted resolution AG/RES.1080 (XXI-0/91), entitled "Representative democracy", in which it instructed its Secretary-General "to call for the immediate convocation of a meeting of the Permanent Council in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected government in any of the Organization's member States, in order, within the framework of the Charter, to examine the situation, decide on and convene an Ad Hoc Meeting of the Ministers of Foreign Affairs, or a special session of the General Assembly, all of which must take place within a 10-day period".

139. Ever since the overthrow of President Aristide's Government on 29 September 1991, OAS has kept the case of Haiti under review and given it priority. After all, the military coup d'état against the Aristide Government had disrupted the trend towards democratization in the region and posed a challenge both to the Santiago Commitment and to resolution AG/RES.1080 (XXI-0/91).

140. Since Aristide's ouster, OAS has taken, inter alia, the following steps relating to the Haitian crisis. On 30 September 1991, the day after the coup d'état, the Permanent Council adopted resolution CP/RES.567 (870/91), entitled "Support to the democratic Government of Haiti", by which it condemned the coup d'état, reiterated the provisions of the Santiago Commitment, reaffirmed its solidarity with the Haitian people in their struggle to strengthen their democratic system, deplored the loss of human lives resulting from the coup d'état and demanded that those responsible for the violation of human rights should be punished. Lastly, pursuant to resolution AG/RES.1080 (XXI-0/91), it decided to convene an Ad Hoc Meeting of Ministers for Foreign Affairs of American States to study the Haitian situation and take the necessary decisions.

141. The Ad Hoc Meeting of Ministers of Foreign Affairs of American States was held in Washington on 3 October 1991 with the recently deposed President Aristide in attendance. There the Ministers resolved, inter alia, in resolution MRE/RES.1/91, to reiterate their vigorous condemnation of the coup d'état in Haiti and to demand full restoration of the rule of law and the immediate reinstatement of President Aristide in the exercise of his authority; to recognize the representatives designated by the Government of President Aristide as the only legitimate representatives of the Government of Haiti to the organs, agencies and entities of the inter-American system; to

recommend the diplomatic isolation of the de facto Government and the suspension of economic, financial and commercial ties with Haiti until the rule of law was restored; to urge the Inter-American Commission on Human Rights to take all measures within its competence to protect and defend human rights in Haiti; and to keep open the Ad Hoc Meeting of Ministers for Foreign Affairs in order to take any additional measures that might be necessary to deal with the situation.

142. On 4 October 1991, an OAS delegation headed by its Secretary-General and composed of six ministers for foreign affairs of American States travelled to Port-au-Prince to initiate negotiations for the restoration of democracy. The Haitian military rejected the proposed arrangements, and the mission was forced to return quickly to Washington.

143. On 8 October 1991 a further Ad Hoc Meeting of Ministers for Foreign Affairs of American States was held, at which resolution MRE/RES.2/91 was adopted, expressing the decision to maintain the measures adopted in the resolution of 3 October and not to recognize the de facto Government as legitimate or accept its representation within the organization; and urging the Governments of the States members of OAS to freeze the assets of the Haitian State and to impose a trade embargo on Haiti. The Ministers also decided to establish a special civilian mission to seek ways of re-establishing and strengthening democratic institutions in Haiti.

144. Taking advantage of the easing of tensions generated by statements by the de facto Prime Minister, Mr. Jean-Jacques Honorat, who on 14 October 1991 had announced his "willingness to seek the best road to democracy", the OAS civilian mission arrived in Haiti on 9 November 1991, led by the former Minister for Foreign Affairs of Colombia, Mr. Ramírez Ocampo, who had been appointed to head the mission by the Secretary-General of OAS. Talks began there and continued from 21 to 23 November 1991 at Cartagena, Colombia where they ended. No agreement was reached.

145. A further attempt was made during the first two weeks of December 1991, when the OAS civilian mission visited Haiti. The negotiations revolved around the designation of a new Prime Minister who would be acceptable to Aristide. Mr. René Théodore, Secretary-General of the former Communist Party (PUCH), now known as the Mouvement pour la reconstruction nationale (MRN), was finally selected. Various difficulties prevented that arrangement from being accepted.

146. In December 1991, a mission from the Inter-American Commission on Human Rights, composed of Mr. Patrick L. Robinson and Mr. Marco Tulio Bruni Celli, also visited Haiti to gather information on the situation in the country and submit a report to the Permanent Council of OAS.

147. On 22 January 1992, the Permanent Council of OAS, after having heard the reports of the Secretary-General and the Inter-American Commission on Human Rights, adopted resolution CP/RES.575 (885/92), establishing a Special Commission to monitor compliance with the embargo.

148. Under the auspices of OAS, and in the face of mounting international pressure, the talks were resumed, and resulted in the signing on 23 February 1992 of the so-called "Washington Protocols", which were promptly disavowed by those who had signed them.

149. On 1 April 1992, the Permanent Council of OAS adopted a declaration on the situation in Haiti in which it expressed its serious concern that, six months after the violent and abrupt interruption of the legitimate Government, the people of Haiti were still being denied their fundamental rights. The declaration also asked OAS member States to increase their controls in order to increase the efficacy of the embargo and to take measures, in keeping with their national laws, against those individuals directly responsible for preventing a peaceful and constitutional resolution of the current crisis, including measures pertaining to visas and the freezing of assets. (This last, of course, was an appeal to the United States Government to impose sanctions against prominent Haitians, both civilian and military, who had supported the coup d'etat.)

150. The Haitian problem was considered in depth by the General Assembly of OAS when it met in the Bahamas in May 1992. In Nassau, prior to the meeting of the General Assembly, an Ad Hoc Meeting of Ministers for Foreign Affairs of American States was held, and on 17 May, resolution MRE/RES.3/92 was adopted, in which the Ministers, inter alia, repudiated the dilatory and intimidating manoeuvres of the sectors that benefited from the disruption of democracy, aimed at preventing ratification of the Washington Protocols, and member States were asked to expand and intensify the trade embargo. In a declaration concerning Haiti adopted during the session, the General Assembly recalled and reaffirmed the unanimous decision of the Ad Hoc Meeting of Ministers for Foreign Affairs to express serious concern over the continual violations of human rights and its profound concern at the situation brought about by the increasingly massive exodus of Haitian nationals to a number of neighbouring countries, which placed their lives at risk; the Assembly also appealed to the hemispheric and international communities in general to extend immediate aid to the displaced Haitians.

151. The Secretary-General of OAS undertook new initiatives. From 18 to 21 August he visited Haiti, accompanied by the Ambassadors to OAS of five Latin American countries, special high-level representatives from other member States, the President of the Inter-American Commission on Human Rights and representatives of the Caribbean Community, the United Nations and the European Economic Community. The mission's main purpose was to seek new forms of political negotiation that might lead to a solution of the crisis.

152. Upon his return to Washington in the last week of August 1992, the Secretary-General of OAS reported that new opportunities and conditions had been identified for the resumption of the political dialogue. He began at once, both in his personal capacity and through the OAS Unit for Democracy (OEA-DEMOC), to undertake the necessary preparations for launching a new dialogue. To that end, he invited both President Jean-Bertrand Aristide and the de facto Prime Minister, Mr. Marc Bazin, to appoint representatives to

resume talks. Talks were in fact resumed between Mr. François Benoît, Minister for Foreign Affairs of the de facto Government, representing Mr. Bazin, and Father Antoine Adrien, representing President Aristide. It was then agreed to send a small civilian mission of observers under OAS auspices.

153. The United Nations, for its part, condemned the coup d'état from the outset of the crisis and recognized the Aristide Government as the only legitimate Government. In the General Assembly, the Security Council and the Commission on Human Rights, the Haitian case was constantly being discussed and analysed. Cooperation between the United Nations and OAS led to a strengthening of the mission of the Special Envoy, Mr. Dante Caputo, whose activities are described below, and to the formation, dispatch, support, financing and activities of the International Civilian Mission. The Security Council decisions imposing economic sanctions were a key factor in the meetings between the parties to the dispute and in the subsequent signing of the Governors Island Agreement.

154. After October 1993, OAS found it necessary to re-establish, jointly with the United Nations, the economic sanctions that had been suspended upon the signing of the Governors Island Agreement.

2. The United States of America

155. From the start of the crisis, the United States Government was actively involved, particularly in OAS and the United Nations, in promoting a negotiated peaceful settlement having as its basic aims the restoration of democracy and the reinstatement of Aristide as President of his country. Further evidence of the United States Government's commitment was the acceptance by President Bush of the credentials of the Ambassador of the legitimate Government, Jean Casimir, even after the overthrow of President Aristide.

156. Although the interest displayed by the United States Government in solving the crisis remained constant, it became more apparent when the new Administration took office in early 1993. The problem of the boat people, President Clinton's criticisms of President Bush on that subject during the electoral campaign, the fear of mass immigration, and pressure from human rights groups, much of the public and black political activists, particularly in the United States Congress, all helped to maintain and even harden the United States Government's position towards the Haitian military regime.

157. A number of events in the first months of President Clinton's Administration bore witness to the United States Government's special interest in solving the crisis.

158. On 26 February 1993, the Ambassador to OAS, Luigi Einaudi, urged the international community to find a solution to the crisis. On 28 February, Secretary of State Christopher said that President Clinton would shortly receive President Aristide; on 12 March, the Secretary of State announced the appointment of Ambassador Lawrence Pezzullo as Special Adviser on Haitian affairs, with instructions to cooperate with the Special Envoy, Mr. Dante Caputo. On 13 March, President Clinton said that he felt "very upset" by the police actions of the de facto Government; on 23 March, the

Special Adviser, Ambassador Pezzullo, went to Haiti and, accompanied by Mr. Warren Charles Redman, the new United States chargé d'affaires in Haiti, General John Sheehan and various other officials, met with the military leaders, the Presidential Commission appointed by President Aristide, the business sector and the churches, and outlined for them his Government's position regarding the necessity of recognizing Aristide as President. On 30 March, Secretary of State Christopher said that he felt optimistic about the negotiations then under way; on 21 April, a spokesman for the State Department announced that the United States would be preparing stronger sanctions against the military and its wealthy supporters, saying that it had been made clear to the de facto authorities and their supporters that the present situation was unacceptable. Although he did not specify what type of sanctions would be applied, he let it be understood that they might include the seizure of the personal bank accounts of those members of the military who had carried out the coup d'état and the cancellation of their visas and those of their families; on 17 May, Democratic Representative John Conyers, at the end of a four-day visit to Haiti, said that the United States favoured the restoration of President Aristide's Government, that repression had increased under the de facto regime, and that the best solution to the crisis was political negotiation. On 18 May, the United States Government let it be known that it was up to OAS and the United Nations to fix a specific timetable or a cut-off date for the reinstatement of President Aristide's Government; on the same day, during a hearing in the House of Representatives Foreign Relations Committee, Secretary of State Christopher, replying to a question from Representative Albert Wynn, said that the United States was trying to speed the return of President Aristide and was cooperating closely with the Special Envoy, that some progress had been made, but that there were still many obstacles. On 19 May, a group of black United States Congressmen (the Black Caucus consists of 39 Representatives and one Senator) made it clear that they were ready to use all the legislative tactics at their command to press for a way out of the crisis, saying that the time for negotiation was over; the Democratic Representative from New Jersey, Donald Payne, asked for effective measures to be applied and specifically requested the United States Government to put into effect an oil embargo and to apply sanctions to the military and the Haitian aristocracy which supports it by freezing their assets in the United States and cancelling their visas. On 26 May, it was announced that President Clinton's Administration would consider the possibility of strengthening and tightening the sanctions; on 4 June, President Clinton announced that he would deny entry into the United States to any member of the armed forces or civilians who obstructed the efforts of the International Civilian Mission and the Special Envoy. From that point on, the negotiations took a different tack.

159. The United States Government has suggested that new political formulas be sought for resolving the Haitian situation following the military authorities' disavowal of the Governors Island Agreement, but so far none has been successful.

3. The international community as a whole

160. In general, the resolutions condemning the Haitian military's coup d'état enjoyed broad support in the political bodies of OAS and in the United Nations. The OAS General Assembly, the Ad Hoc Meetings of Ministers

for Foreign Affairs, the Permanent Council and the Inter-American Commission on Human Rights produced unanimous resolutions on the subject, as did the General Assembly of the United Nations, the Security Council and the Commission on Human Rights. The Council of Europe, the Caribbean Community, various international bodies and organizations and the non-governmental human rights organizations all expressed themselves to the same effect. From October 1993, in various forums and institutions, the international community again considered the case of Haiti. However, more recently the matter would appear to have suffered a loss of momentum and priority in international forums.

4. Individual countries

161. In general, all countries expressed their views on the Haitian crisis, either individually or through their membership in international bodies. However, apart from the United States of America, whose activities are described above, special mention should be made of the activities of three other countries: Canada, France and Venezuela. They, together with the United States, constituted the "Group of Friends of the Secretary-General" set up to find a solution to the crisis.

IV. THE DIFFICULT NEGOTIATING PROCESS

A. Previous efforts

162. As a result of the international community's initial efforts, a meeting was held in Cartegena, Colombia, from 21 to 23 November 1991. The participants included, on the one hand, President Aristide and his advisers and, on the other, delegations from both houses of the Haitian Parliament, led by their respective Presidents, Senator Déjean Bélizaire and Deputy Duly Brutus. Although no agreement was reached, the meeting did have the merit of bringing representatives of at least two of the parties to the conflict together to the bargaining table for the first time since the coup d'état. It marked the beginning of a long process that would culminate in the Agreement signed in July 1993 on Governors Island.

163. Following the meeting at Cartagena, a series of talks was held at the instigation of the OAS civilian mission, which returned to Haiti on several occasions in January and February 1992. Agreement on certain points seemed imminent. In early January, President Aristide had accepted the Haitian Parliament's designation of René Théodore as Prime Minister, but difficulties ultimately arose when it came to implementing the agreed arrangement. February saw the signature of the Washington Protocols, which the parties immediately repudiated and disregarded. All of these talks and negotiations suffered from two fundamental deficiencies: the lack of any real political will for a settlement on the part of the parties and the absence of the military, especially as, in the wake of the coup d'état, real power in Haiti lay in the hands of the military high command. In the end, Parliament did not ratify the Washington Protocols, and they were rendered null and void. Mr. Bazin was subsequently named Prime Minister.

B. The International Civilian Mission

164. The first steps towards the establishment of an international civilian mission and its dispatch to Haiti were taken during the visit to the country in August 1992 of an OAS delegation made up of that organization's Secretary-General, the Ambassadors of five member countries, the President of the Inter-American Commission on Human Rights and representatives of the Caribbean community, the United Nations and EEC. The OAS delegation hoped to explore opportunities for launching the talks, to become acquainted with the situation and to suggest formulas for an understanding.

165. One of the main points discussed during the talks at Port-au-Prince was the sending of a permanent OAS civilian observer mission which would remain in Haiti until the political crisis was resolved. Efforts continued until September, when the two parties - the de facto Government and Aristide - accepted the idea advanced by the Secretary-General of OAS, of sending a permanent civilian mission. The subject was discussed with representatives of both parties and it was agreed that the mission should be dispatched.

166. There were difficulties from the outset. For example, while Aristide's representatives, led by Father Antoine Adrien, Chairman of the Presidential Negotiating Committee, thought that the civilian mission should involve a large number of participants so that it could observe the situation in the interior of the country and rural areas, the de facto Government's representative, Prime Minister François Benoît, insisted that it should be small. Finally, during the first week of September 1992, it was officially announced that OAS would dispatch a mission, initially composed of 18 observers, which would remain in Haiti for an indefinite period. The purpose of the mission would be to help to secure a general reduction in violence and to promote respect for human rights, to cooperate in the distribution of humanitarian aid and to assess the progress made towards a political solution of the crisis.

167. Once in Haiti, however, the members of the civilian mission found it difficult to carry out their task. On various occasions, the de facto authorities in fact refused to guarantee the safety of the observers, demanding that OAS should sign an agreement with them. The Secretary-General of OAS replied that he would not sign an agreement with an illegitimate Government. This difficulty was subsequently overcome by the signature of a logistical agreement.

168. On 9 February 1993, an exchange of letters between the Special Envoy and the de facto Prime Minister defined the mandate of the International Civilian Mission and provided for its dispatch to Haiti. On the basis of that agreement, on 14 February, the Secretary-General of OAS sent an additional contingent of 40 civilian observers to join the small group already established at Port-au-Prince. The size of the Civilian Mission was subsequently increased. It continued to encounter difficulties in its work, as it received no cooperation from the de facto authorities. At the same time, a small group of United Nations staff was dispatched to Haiti to prepare for the arrival of the members of the mission that would be sent by the Secretary-General of the United Nations.

169. The Civilian Mission's deployment in the interior of the country began on 5 March 1993 with the establishment of an outpost at Jérémie, the capital of the Department of Grande-Anse. By the end of March, observer groups had been set up in each of the nine Departments, and the Mission had close to 100 observers deployed throughout the country. From March onward, the Mission began to report back on its activities and the human rights situation in Haiti in general. By August 1993, the Mission had offices and sub-offices in all the Departments and in many municipalities.

170. The Civilian Mission's mandate, responsibilities, method of work and guarantees were defined in the agreement signed between the Special Envoy and the de facto Government in February 1993. The nature, structure, organization, composition and other aspects of the Civilian Mission were established in the memorandum of understanding signed on 6 May 1993 by representatives of the Secretary-General of OAS and the Secretary-General of the United Nations.

171. The Mission is headed by Ambassador Collin Granderson. Its team of human rights professionals, under the leadership of Ian Martin, former Secretary-General of Amnesty International, and his assistants, Mr. William O'Neill, Mr. Tiebilé Dromé and Mrs. María Clara Martin, is made up of young professionals of various nationalities who have a real vocation for service, and sense of responsibility.

172. The Mission has been able to establish observation posts throughout the country. The Special Rapporteur had the opportunity to visit some of these posts during his visit to Haiti. The Mission's functions include: receiving and reporting accusations; protesting violations to the authorities when they occur or are reported, either through press releases or in letters to the military leaders; visiting prisons and other detention centres; providing first aid to those who have been injured, beaten or generally ill-treated; and preparing reports.

173. According to the Mission's report of 3 June 1993 (A/47/960 and Corr.1), although the deployment of observers did not lead to an abatement in the repression, the mere presence of the Mission did have some positive effects: for example, the number of arbitrary detentions decreased; some prisoners were released after the observers applied to the authorities; persons who had been detained since before the Mission's arrival were also released; the number of beatings declined; certain persons who had been living in hiding were able to return to their homes; and efforts were made to exercise the rights and freedoms of association and expression.

174. It should be noted, however, that on many occasions the military not only failed to respect the presence of observers but hindered their work and committed human rights violations as a way of demonstrating its discontent at their presence: for example, on some occasions soldiers chanted hostile slogans when passing in front of the Mission premises, while on others, Mission members and staff were harassed; in addition, various demonstrators and passers-by were beaten in the presence of observers, anti-Mission posters appeared, and on various occasions soldiers burst into private homes where observers were talking to Haitian citizens.

175. There is a belief in international agencies and political circles and among Haitians in general that the observer Mission, particularly the teams involved in human rights work, should remain in Haiti for some time, even after President Aristide is reinstated.

176. Although the International Civilian Mission had to leave Haiti following a worsening of the crisis in October 1993, it has continued its work of investigating and analysing the human rights situation in Haiti. For example, the Mission prepared a detailed report on the circumstances and facts of the assassination of Mr. Antoine Izmery, a copy of which was sent to the Special Rapporteur by Special Envoy Dante Caputo on 29 November 1993. In the report the International Civilian Mission reaches the conclusion that Izmery's assassination was premeditated and carried out with the complicity of high-ranking members of the military hierarchy.

C. Mandate and activities of the Special Envoy

177. On 24 November 1992 the United Nations General Assembly adopted its resolution 47/20, in which it requested the Secretary-General to take the "necessary measures in order to assist, in cooperation with the Organization of American States, in the solution of the Haitian crisis". To that end the Secretary-General of the United Nations appointed as his Special Envoy for Haiti the Argentine diplomat and former Minister for Foreign Affairs of his country, Mr. Dante Caputo, who accepted the assignment and stated that his mission would be one of mediation. The Special Envoy paid a first, exploratory visit in early December, followed by others, during which he met with and obtained information from various political circles in Haiti.

178. Taking into account various factors, including the imperative need to coordinate activities with those already being undertaken by the United Nations, the Secretary-General of OAS also asked Mr. Caputo to act as his Special Envoy. And so Mr. Caputo was appointed Special Envoy of the two Secretaries-General, thereby acquiring greater stature and negotiating capacity.

179. In February and March 1993 Mr. Caputo travelled to Haiti on several occasions and met General Cédras and representatives of the Church and political parties, as well as Mr. Bazin and the Presidential Commission. On 29 March the Special Envoy spoke of a six-month period for the return of Aristide, but in the face of further difficulties, on 19 April the Secretary-General of the United Nations expressed his concern at the inflexibility of the Haitian military. Prime Minister Bazin hardened his position and accused the Special Envoy, OAS and the United Nations of interventionism and denied any knowledge of a Caputo plan. The rupture was immediately followed by further negotiations, and on 30 April the Special Envoy announced positive developments. In the face of further difficulties it was stated on 20 May at the United Nations that the mission to be undertaken the next day by the Special Envoy would be the international community's last attempt to achieve a negotiated solution to the crisis, before the possibility of sanctions was contemplated. That same day it was announced that the Special Envoy would travel to Haiti accompanied by Ambassador Pezzullo, and that both officials would travel to Port-au-Prince with a stronger message than on their previous visits.

180. During that visit the Special Envoy made public the fundamental elements of his plan: (a) deployment of a multinational police force, subject to the agreement of all the parties and a decision by the Security Council, before the return to power of President Aristide; (b) appointment of a new Prime Minister, proposed by President Aristide and confirmed by the Parliament; (c) an amnesty and other guarantees for the members of the military involved in the coup, who were to resign their positions before the return of President Aristide; and (d) a financial assistance programme of some 1 billion dollars phased over five years, in accordance with plans to be prepared by the expert mission from the World Bank, the Inter-American Development Bank (IBD), the International Monetary Fund (IMF) and the United Nations Development Programme (UNDP).

181. There was uneven progress in the negotiations throughout the first six months of 1993.

182. By mid-June 1993 the prospects for a political negotiation of the Haitian crisis seemed to be fading. The United Nations Secretary-General's Senior Adviser for Political Affairs in a statement to the Security Council on 16 June, said that the de facto Haitian authorities had not shown the political will to reach a negotiated settlement to the crisis. At around the same time the Secretary-General expressed his belief that, in the absence of firmer pressure from the international community, the prospects for a rapid and peaceful solution would be seriously undermined.

183. In these circumstances efforts were intensified. The Special Envoy indicated to the de facto Government that if it did not accept a dialogue with the representatives of the legitimate Government the sanctions provided for under Chapter VII of the Charter would enter into force on 23 June. Exercising further pressure, the Special Envoy at last secured the participation of President Aristide and the Commander-in-Chief of the Armed Forces, Raoul Cédras, accompanied by their respective delegations, in the meeting that began on 27 June on Governors Island.

184. Following the worsening of the crisis in October 1993, Special Envoy Dante Caputo remained in Haiti, making every effort to prevent the negotiating process from collapsing. On 28 October, the Special Envoy, speaking on behalf of the Secretary-General of the United Nations, made a statement to the press in which he regretted that the timetable laid down in the Governors Island Agreement had not been observed and announced that if the Agreement was not complied with, the Secretary-General would have no choice but to recommend that the Security Council step up the sanctions. On the same day the Special Envoy sent out letters inviting the various Haitian political forces to come together in search of formulas for political negotation aimed at overcoming the crisis. The military refused to attend.

D. The Governors Island Agreement

185. On 3 July 1993, following intensive negotiations, the Governors Island Agreement was signed. This Agreement represents the culmination of a long process of talks and pressure which revealed the Special Envoy's skill, experience, persuasive talents and dedication. More than once during the negotiations difficulties arose, owing essentially to intransigence and a lack

of political will on the part of both sides. There were moments of discouragement. Just a month before, in May and June 1993, many analysts were referring pessimistically to the Special Envoy's mission and the prospects for a peaceful settlement. At that time, 20 months after the overthrow of Aristide, who remained in exile, the military was clinging to power, the international community stood in condemnation of the situation in Haiti but remained to all appearances impotent in the face of the difficulties and lack of political will to achieve a settlement; equally serious, massive violations of human rights continued day by day, notwithstanding the presence in the country of the Civilian Mission observers.

186. The Governors Island Agreement covers virtually all the issues discussed in the previous talks and negotiations: it is based on mutual recognition of the office and authority of the two principal figures in the crisis. General Cédras recognizes Mr. Aristide as President of the Republic, who recognizes the former as Commander-in-Chief of the Armed Forces of Haiti. (For the text of the Agreement, see A/47/975-S/26063.)

187. The Agreement ends with a solemn declaration:

> "The President of the Republic and the Commander-in-Chief agree that these arrangements constitute a satisfactory solution to the Haitian crisis and the beginning of a process of national reconciliation. They pledge to cooperate fully in the peaceful transition to a stable and lasting democratic society in which all Haitians will be able to live in a climate of freedom, justice, security and respect for human rights."

188. As soon as the Agreement was signed, the Secretary-General of the United Nations issued a report (A/47/975-S/26063 of 12 July 1993) in which he conveyed the following important information:

(a) Verification of the Agreement would be entrusted to the Special Envoy;

(b) The Civilian Mission would remain in Haiti indefinitely;

(c) Representatives of the Secretary-General would consult regularly with President Aristide to review the progress achieved in the implementation of the Agreement;

(d) He would propose to the Security Council that the sanctions should be suspended immediately upon confirmation of the new Prime Minister by Parliament;

(e) He would consider as failure to comply with the undertakings, inter alia, refusal by the High Command of the Armed Forces to obey the decisions of the new Commander-in-Chief appointed by President Aristide, and the continuation of violations of the human rights and fundamental freedoms set forth in the international instruments to which Haiti is a party and in the Constitution of Haiti;

(f) Upon the return of Aristide and the start of his Government, the Secretary-General would report to the Security Council with a view to the definitive lifting of the sanctions;

(g) The Secretary-General of OAS had informed him that he would take similar action with respect to the measures adopted by that organization; and

(h) The Secretariat was studying the measures to be taken with regard to the provision of development assistance and the implementation of administrative, judicial and police reform, in accordance with the Agreement.

E. Implementation of the Agreement

189. At the time the interim report was drafted only three of the points in the Governors Island Agreement had come into effect: (a) opening of a dialogue; (b) the designation and confirmation of the Prime Minister and designation of the new Government; and (c) suspension of the sanctions.

1. Opening of a dialogue

190. Immediately after the signing of the Governors Island Agreement, the anticipated dialogue between the various Haitian groups involved in the crisis began under the auspices of the United Nations and OAS and with the active participation of the Special Envoy.

191. Talks between the representatives of President Aristide and the political forces and representatives of the Haitian Parliament began on 13 July. In the course of these talks problems arose: for example, the groups supporting President Aristide questioned the presence of various members of Parliament who had been elected in the contested election of 18 January 1993. Two relevant circumstances also contributed to the difficult atmosphere, although they did not form part of the negotiations: the refusal by the Haitian television service to broadcast a tape containing a message from President Aristide, and, the refusal by the de facto authorities to agree to an immediate on-site investigation by an IACHR mission in Haiti.

192. The meeting was well-attended by representatives of almost all the Haitian political sectors. The following is a complete list of the members of the various delegations.

193. Representing President Aristide, the following members of the Presidential Negotiating Commission: Father Antoine Adrien, Fred Joseph, Georgette Omero, Jean J. Molière, Jean-Baptiste Chavannes, Wesner Emmanuel and Michel Gaillard.

194. Representing the Parti nationaliste progressiste révolutionnaire (PANPRA) and the Socialist Group: Serge Gilles, Duly Brutus, Sorel Jacinthe, Anthony Barbier, Jean Lesky Dominique, Ives Duval and Jean-Baptiste Lavaud.

195. Representing the Alliance pour la cohèsion parlementaire: Déjean Bélizaire, Julio Larosilière, Amos André, Pierre-Simon Georges, Joseph Lambert, Rémy Mathieu and Rita Frédérique Mon Coeur.

196. Representing the Front national pour le changement et la démocratie (FNCD) and its allies: Victor Benoît, Evans Paul, Joseph Fignolé Jean-Louis, Hyacinthe Jean-Baptiste, Rondal Pierre Cannel, Patrick Norzeus and Jean-Claude Bajeux.

197. Representing the Constitutionalist bloc: Jean Robert Martínez, Turneb Delpé, Pauyo Herard, Rony Mondestin, René Théodore, Yvon Ghislain and Pierre André Guerrier.

198. Parliament was officially represented by the Presidents of the two Houses: Antoine Joseph, de facto President of the Chamber of Deputies and Vice-President of the Mouvement pour l'instauration de la démocratie en Haiti (MIDH); Thomas Dupiton, de facto President of the Senate; Alexandre Médard, "legal" President of the Chamber of Deputies; and Jean-Louis Firmin, "legal" President of the Senate.

199. All those named signed the Pact, with the exception of: Turneb Delpé, Rony Mondestin, René Théodore and Jean-Louis Firmin.

200. Under the New York Pact, the signatories undertake to observe a political truce of six months to guarantee a "smooth and peaceful" transition to democracy. (For the text of the Pact, see A/47/1000-S/26297.)

2. Designation and confirmation of the new Prime Minister and composition of the new Government

201. Immediately after the conclusion of the Governors Island Agreement and the New York Pact it was announced that President Aristide had decided to nominate Robert Malval as the new Prime Minister. Mr. Malval is a wealthy advertising executive and a prominent businessman. He is an old personal friend of President Aristide and was one of the main contributors to his election campaign in 1990. He owns and manages the Imprimerie Le Natal, the largest publishing company in Haiti; the company provided President Aristide's campaign with public information services and has also published two of Aristide's books. Mr. Malval has never held public office before; he is considered a "moderate" and is apparently widely accepted by the different political and economic groups. He has close ties to the private sector. Mr. Malval was the main organizer of the successful meeting held in Miami on 22 and 23 July 1993, known as the "Haitian Summit", which enabled Aristide to meet representatives of the Haitian private sector, international donors and potential investors from the United States. Mr. Malval has also organized other meetings of reconciliation to clear up doubts and potential misunderstandings between followers of President Aristide and Haitian businessmen.

202. Mr. Malval is 50 years old, holds a degree in political science from the University of Miami and has studied at the Institut des Sciences Politiques in Paris.

203. Finally, after much discussion, Mr. Malval was confirmed as Prime Minister at the meetings of Deputies and Senators of the National Assembly on 23 and 24 August 1993. On 26 August, he travelled to Washington to be sworn in before the President, to whom he presented the list of members of the Government.

204. The new Government was formed on 31 August 1993 of individuals belonging to different parties and sectors of the country. Only PANPRA and the Socialist Group were left out of the Cabinet. Malval's first Cabinet was composed as follows: Minister of the Interior, René Prosper; Foreign Relations, Claudette Werleight; Justice, Guy Malary; Defence, Jean Beliotte; Planning, Jean-Marie Cherestal; Information, Hervé Denis; Finance, Marie Michel Rey; and Agriculture, François Severin. All the above Cabinet members are independents, although Rey and Severin were members of René Pleval's Cabinet during the first stage of Aristide's Government. Other Malval Cabinet members are: Education, Victor Benoît, Secretary-General of KONAKOM; Social Affairs, Bertony Barry, a member of Mouvement pour la reconstruction nationale (MRN); and Health, Jean Molière, a leader of the Mouvement d'organisation du pays (MOP).

205. The Government of Prime Minister Malval has not been able to discharge its functions. Owing to the actions and abuses committed by the armed gangs, ministers and other senior officials have not been able to take up their duties and some have had to go into hiding. Since the assassination of the Minister of Justice in Malval's Cabinet on the streets of Port-au-Prince in mid-October 1993, no investigation has yet begun with a view to arresting the criminals. Malval tendered his resignation with effect from 15 December. In January 1994, Malval still remains in office, without however being able to perform his functions as Prime Minister.

3. Suspension and reimposition of sanctions

206. Pursuant to the Governors Island Agreement, immediately after the designation and confirmation of Prime Minister Malval, the Secretary-General of the United Nations asked the Security Council to suspend the sanctions adopted under resolution 841 (1993). At the same time, the Secretary-General of the Organization of American States asked for the suspension of the embargo adopted at the Ad Hoc Meeting of Ministers of Foreign Affairs.

207. Following the repudiation of the Governors Island Agreement by the Haitian military and the report transmitted to it by the Secretary-General on 13 October 1993 (S/26573), the United Nations Security Council adopted resolution 873 (1993), in which it decided to apply again as from 18 October 1993 the sanctions provided for in resolution 841 (1993). In its resolution 875 (1993) of 16 October, the Security Council called upon Member States to use all such measures as might be necessary to ensure strict application of the sanctions, and in particular to halt all ships bound for Haiti in order to inspect their cargoes and verify their destinations. There being no change in the attitude of the Haitian military, the embargo took effect on the specified date under the supervision of United States ships, promptly joined by ships from Canada, France, the United Kingdom, the Netherlands and Argentina. On the same day, OAS reimposed its own economic sanctions.

4. Other issues

208. All the other undertakings contained in the Governors Island Agreement remained without effect, namely:

(a) The effective resignation of General Raoul Cédras and the appointment of a new Commander-in-Chief of the Armed Forces of Haiti and of the other members of the Military High Command;

(b) Replacement of Colonel Michel François as Commander-in-Chief of the Police Force;

(c) The return to Haiti of President Jean-Bertrand Aristide so that he may resume his constitutional duties;

(d) Separation of the armed forces from the police force, launching of the United Nations and OAS police training and armed forces modernization programmes, and abolition of all paramilitary groups;

(e) Execution by Parliament of the political and legislative acts agreed in the New York Pact;

(f) International cooperation to solve the serious and urgent problems of the Haitian people; and

(g) Establishment by the United Nations and OAS of a mechanism for verifying compliance with the Agreement.

5. Observations by the Special Rapporteur concerning the negotiations

209. The negotiated political solution to the Haitian crisis provided for in the Govenors Island Agreement was undoubtedly of particular relevance for the study of mechanisms for the international protection of human rights. In this case, pressure from the international community, including its global and regional political bodies, and the persistent efforts of certain internal and external groups led to a series of negotiations without precedent.

210. _Coups d'état_ have been staged, elected Governments overthrown and military dictatorships set up many times in almost every country in Latin America. The question therefore arises as to why greater international pressure was exercised in this case than in cases of _coups d'état_ in other countries. Why was the pressure maintained long enough to force the restoration of the legitimate Government, almost two years after its overthrow? What factors, external and internal, played a part in this process of reinstatement?

211. Given the significance of this development, its importance in setting a precedent and its potential impact on the human rights situation, especially in Latin America and the Caribbean, the Special Rapporteur considers it necessary to offer a number of observations on the matter.

212. To begin with, it is important to note that in the case of Haiti, a number of factors, chiefly external in nature, created the conditions for international pressure to be exerted and maintained long enough for a political settlement to be reached.

213. In the first place, President Aristide's election, in late 1990, came at a time when the hemisphere was experiencing a move towards democracy. The electoral process in Haiti marked the completion of a series of elections which had resulted in the establishment, in all Latin American countries with the sole exception of Cuba, of civilian Governments rendered legitimate by collective participation. That circumstance, which was applauded by the ideologues of democracy, was unprecedented in the history of the hemisphere and generated a high degree of optimism about the process of political development and respect for human rights. Thus the overthrow of President Aristide on 29 September 1991 was seen not only as an obstacle to Haiti's political progress, but also as a step backward that could trigger political regression in the region.

214. Only a few months before the coup d'état against President Aristide, the General Assembly of the Organization of American States had unanimously adopted, at its June 1991 session in Santiago, Chile, two resolutions of particular significance. In the first, entitled "Santiago Commitment to Democracy and the Renewal of the Inter-American System", the countries of the hemisphere undertook to strengthen representative democracy as an expression of the legitimate and free manifestation of the will of the people and expressed their decision to adopt a set of efficacious, timely and expeditious procedures to ensure the promotion and defence of representative democracy. In the second entitled "Representative democracy" (AG/RES.1080/XXI-0/91), in which the States members of OAS resolved: (a) to instruct the Secretary-General to call for the immediate convocation of a meeting of the Permanent Council in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process in any of the organization's member States, in order to examine the situation, decide on and convene an ad hoc meeting of the Ministers of Foreign Affairs, or a special session of the General Assembly; (b) to state that the purpose of the ad hoc meeting of Ministers of Foreign Affairs or the special session of the General Assembly should look into the events collectively and adopt any decisions deemed appropriate; and (c) to instruct the Permanent Council to devise a set of proposals that would serve as incentives to preserve and strengthen democratic systems, based on international solidarity and cooperation. The coup d'état against the constitutional Government of President Aristide was the first sudden interruption of a constitutional process in the hemisphere following the adoption of those resolutions. Accordingly, the inter-American community had to respond to those developments. Moreover, the situation not only called for the immediate implementation of those resolutions, but also represented a challenge to the strength and effectiveness of the inter-American political system.

215. Furthermore, some Governments of the hemisphere, for various reasons, have shown special interest in finding a solution to the Haitian crisis from the outset. In addition to the fact that democratic countries now assign high priority in their foreign policies to human rights issues, certain countries have also been moved by other considerations. Thus, for example, the

Government of the United States of America has an interest in the matter because of the presence in its territory of a large Haitian community, because of the well-known problem of the boat people, and because of the pressure exerted by the Black Caucus in Congress, as well as the demands of human rights and humanitarian organizations. France is concerned because of its position as the former metropolitan Power, because of the common language, because it has overseas Territories in the Caribbean, and for other reasons. Canada has been influenced by the presence of a strong Haitian community; Venezuela's interest stems from its history and its foreign policy, and the Dominican Republic's concern relates to political, geographic and economic considerations.

216. From 14 to 16 January 1994, the "Miami Conference: Democracy, the Solution to the Haitian Crisis", convened by President Jean-Bertrand Aristide, was held in Miami, Florida. In addition to President Aristide, the meeting was attended by: members of the Malval Cabinet; members of both houses of the Haitian Parliament; the Mayor of Port-au-Prince, Mr. Paul Evans; representatives of the "Friends of the Secretary-General" (Canada, United States, France and Venezuela), representatives of the Secretary-General of OAS; a member of the Inter-American Commission on Human Rights (IACHR); the director of the UN-OAS Civilian Mission, Mr. Colin Granderson; representatives of non-governmental human rights organizations; and others. Members of the United States Congress and such distinguished persons as Jesse Jackson, Charles Rangel, Taylor Branch, Major Owens and Corrine Brown also attended and took a very active part. The Special Rapporteur was invited and attended the Conference meetings.

217. The Conference considered various matters pertaining to the Haitian crisis, particularly the human rights situation. Possible alternatives for solving the political crisis were examined in the light of the terms of the Governors Island Agreement and the New York Pact. Finally, it was agreed: that the talks should continue with a view to achieving a negotiated solution to the crisis; that the de facto Government should be condemned for the continuing human rights violations; that the Haitian question should continue to be given priority within the United Nations and OAS; that a humanitarian solution should be sought to the problem of the boat people; that the economic and political sanctions imposed on the military government should be strengthened; and that compliance with the Governors Island Agreement and the New York Pact should be sought.

218. During the Conference the Special Rapporteur had a chance to exchange views about the social, political and economic situation of Haiti with some of the personalities present: Ambassador Lawrence Pezzulo, Special Envoy of the United States Government for the Haitian question; Mr. Hugo de Zela, assistant to the Secretary-General of OAS; Mr. Colin Granderson, director of the UN-OAS Civilian Mission; Victor Benoît, leader of the KONOKON Party and Minister of Education in the Malval Cabinet; Mr. Patrick Robinson, member of the Inter-American Commission on Human Rights; members of the Haitian Parliament; and representatives and officials of non-governmental human rights organizations.

V. CONCLUSIONS

219. In its resolution 1993/68, the Commission on Human Rights stressed the importance of establishing the necessary cooperation between the Special Rapporteur and the International Civilian Observer Mission of the United Nations and the Organization of American States in order to further the fulfilment of their mandates and requested the Special Rapporteur to submit a provisional report to the General Assembly at its forty-eighth session (A/48/561 of 10 November 1993, submitted to the Third Committee of the General Assembly on 22 November 1993) and a final report to the Commission on Human Rights at its fiftieth session.

220. Throughout 1993, both OAS and the United Nations, through the Special Envoy of their Secretaries-General, worked hard to secure a negotiated settlement to the Haitian political crisis. These efforts led to the Governors Island Agreement, whose provisions were beginning to be put into effect when the military repudiated it.

221. It was basically international pressure and a certain amount of fear on the part of the Haitian military of being overthrown by multilateral force that led to the signing of the Agreement and the opening of a possible solution to the crisis. At no time did the military show any interest in signing the Agreement. Even after the Agreement had been signed, when the Special Rapporteur visited Haiti and had talks with the military leaders, including General Cedras himself, it was already clear that they had no intention of complying with the Agreement.

222. Notwithstanding the commitment entered into upon the signing of the Agreement, the military does not accept President Aristide's return or the restoration of the democratic process.

223. Human rights violations continued throughout the year, even after the signing of the Governors Island Agreement and the New York Pact. As this report is being written, in early October 1993, the human rights situation in Haiti can still be considered very serious: each day brings murders, harassment, beatings, abuses by elements within the military and paramilitary bodies, extrajudicial executions, arbitrary imprisonment, etc. The killings of Antoine Izméry, by attachés in September and of the Minister of Justice in October, to mention only the two most conspicuous cases, highlight this situation. And many other crimes have been committed.

224. Through the paramilitary groups, the military has created an atmosphere of unrest. They have hampered action by the Prime Minister Malval's Government, prevented government officials, including members of the Cabinet, from discharging their duties and have committed acts of violence against the supporters of President Aristide.

225. In 1993, thanks to the skill, perseverance and extraordinary negotiating ability of the Special Envoy, and with the help of a few other domestic and foreign circumstances, the United Nations and OAS won a significant diplomatic battle with the signing of the Governors Island Agreement, the opening of the dialogue, and the designation and confirmation of the Prime Minister. But these achievements offered only the hope of the beginning of a process that

could most probably lead to a return to democracy. This came to grief with the Haitian military leadership's repudiation of the Agreement. Specific issues lie ahead, such as: the separation of the police from the armed forces; the elimination of the section chiefs and paramilitary bodies; the investigation of crimes and human rights violations; the adoption and entry into force of vital legislation; the resignation or transfer of certain military leaders; the return of President Aristide; and the entry into operation of international cooperation and assistance programmes. The taking of action on these issues depends on the will of the Haitian military. And we have already seen that this will has been lacking.

226. The International Civilian Mission played a very important role in this process. Its members were serious and committed to the programme, with a vocation for service and professional skills. The Mission's presence throughout the country, despite the difficulties encountered and hostility from the military and the paramilitary bodies, prevented worse human rights violations, aided the victims of repression and provided more detailed information on the specific human rights problems in each area of Haiti.

VI. RECOMMENDATIONS

227. The following are the recommendations of the Special Rapporteur:

(a) That the Commission on Human Rights should condemn the non-observance of the Governors Island Agreement and express its deep concern at the attitude of the Haitian military leadership in repudiating its undertakings and preventing by force the reinstatement of the civilian Government;

(b) That the Commission on Human Rights should endorse the decisions taken by the United Nations General Assembly and Security Council, and by the Permanent Council and Ad Hoc Meeting of Ministers of Foreign Affairs of the Organization of American States to the effect that sanctions against the Haitian military regime be maintained and indeed intensified; and also, if need be, that new formulas should be explored whereby the international community can help the Haitian people to liberate itself from the regime of terror to which it is subjected and assist in the establishment of a civilian Government ensuring enjoyment of the most basic human rights;

(c) That the Commission on Human Rights should express its gratitude for the work done by Dante Caputo, the Special Envoy of the Secretaries-General of the United Nations and the Organization of American States, and by the leaders and other members of the International Civilian Mission, whose efforts were fundamental both in securing the political agreements arrived at and in preventing an increase in the number of human rights violations;

(d) That the Commission on Human Rights should request the Secretary-General, when domestic circumstances permit, to send back to Haiti members of the International Civilian Mission, which should remain in the country even after the restoration of democracy and the rule of law;

(e) That the Commission on Human Rights and the other competent bodies of the United Nations and the Organization of American States should continue to observe and remain apprised of the human rights situation in Haiti for the purpose of recording and reporting violations, requiring the de facto authorities to fulfil international and constitutional obligations, helping to solve the serious problems facing Haitian society in this area, and informing Governments and the various bodies of the United Nations and the Organization of American States of the human rights situation in Haiti;

(f) That the Commission on Human Rights should make an appeal for work to continue with a view to achieving national reconciliation and that both the terms of the Governors Island Agreement signed on 3 July 1993 and the terms of the New York Pact of 16 July 1993 should be regarded as a good basis for possible future negotiations in order to find an acceptable solution to the Haitian crisis;

(g) That, when domestic circumstances permit, a programme for the promotion and dissemination of human rights, aimed specifically at training the military, police and prison authorities, the members of governmental and non-governmental human rights organizations, political parties, etc., should be established in Haiti, with the participation of the Inter-American Commission on Human Rights, the Centre for Human Rights and the Special Rapporteur;

(h) That the de facto authorities of Haiti should be explicitly required to honour their obligations assumed in ratifying the International Covenant on Civil and Political Rights and other international human rights instruments;

(i) That the various groups in Haitian society should be requested and required to honour fully the commitments they entered into when they signed the Governors Island Agreement and the New York Pact;

(j) That, when the legitimate Government of Haiti is reinstated, it should be helped, through material and technical advisory assistance provided by international agencies, so that it can honour its pledge to develop programmes relating to the administration of justice, prison administration, the updating of civil and criminal legislation, the separation of the police from the armed forces, the training of the police and modernization of the army, the investigation of crimes committed by the military, the authorities, the security agents and those under their orders in violation of human rights, full adherence to the 1987 Constitution and the full restoration of the rule of law which was undermined by the coup d'état of 29 September 1991;

(k) That, in view of the serious and very difficult human rights situation in Haiti, international monitoring of this situation by the Commission on Human Rights should continue under the item "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories".

228. These are the recommendations submitted by the Special Rapporteur after taking up the mandate of the Commission on Human Rights and having visited the country, received and processed information and studied the human rights

situation in Haiti throughout 1993. The Special Rapporteur deems it appropriate to continue monitoring carefully the political economic and social situation in the country and expresses his conviction that only through aid, cooperation and international technical assistance, particularly in the fields of economic and social development and institution-building, as well as the establishment of a culture of respect for human rights, can the conditions for the future democratic process in Haiti be established.

Notes

1/ United Nations/Organization of American States, Consolidated Humanitarian Plan of Action, March 1993.

2/ United States of America, Department of State, "Country reports on human rights practices for 1992", February 1993, p. 421.

3/ Ibid., p. 3.

4/ World Organization against Torture, Geneva, 11 June 1993 (HT/110693).

5/ International Civilian Mission, press release dated 11 August 1993.

6/ Ibid., and press release CP/93/31.

7/ Lawyers Committee for Human Rights, 23 August 1993.

8/ International Civilian Mission, press release CP/93/10, dated 5 May 1993.

9/ The Lawyers Committee for Human Rights, letter dated 23 August 1993.

10/ International Civilian Mission, press release dated 11 August 1993.

11/ Human Rights Organization Platform, Haiti, July 1993.

12/ International Civilian Mission, press release CP/93/10, dated 5 May 1993.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the human rights situation in the Republic of Equatorial Guinea prepared by Mr. Alejandro Artucio, Special Rapporteur of the Commission, pursuant to Commission resolution 1993/69

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Introduction

1. The Commission on Human Rights has concerned itself publicly with the question of Equatorial Guinea since 1979. On 8 March 1979, at its thirty-fifth session, the Commission adopted a confidential decision whereby it discontinued consideration of the human rights situation in Equatorial Guinea under Economic and Social Council resolution 1503 (XLVIII) - the confidential procedure - and took up consideration of the question under the public procedure provided for by Commission resolution 8 (XXIII) and Council resolution 1235 (XLII). Subsequently, on 13 March 1979, the Commission adopted resolution 15 (XXXV), by which it decided to entrust to a special rapporteur of the Commission, to be appointed by its Chairman, the task of making a thorough study of the human rights situation in Equatorial Guinea. The Economic and Social Council, for its part, approved the Commission's decisions by its own decision 1979/35 of 10 May 1979, adding that the material before the Commission on the question should no longer be restricted under Council resolution 1503 (XLVIII).

2. The Chairman of the Commission appointed as Special Rapporteur, Mr. Fernando Volio Jiménez (Costa Rica), who submitted his first report on the human rights situation in Equatorial Guinea to the Commission at its thirty-sixth session (E/CN.4/1371 and Corr.1). In the light of that report, the Commission adopted resolution 33 (XXXVI) of 11 March 1980, whereby it decided to request the Secretary-General to appoint, as an expert in his individual capacity, a person with wide experience of the situation in Equatorial Guinea, in particular with a view to assisting the Government of that country in taking the action necessary for the full restoration of human rights and fundamental freedoms, keeping in mind the recommendations of the Special Rapporteur and the economic, political and social realities of the country. The Commission's resolution was approved by the Economic and Social Council on 2 May 1980 (decision 1980/137). The Secretary-General appointed Mr. Fernando Volio Jiménez as the Expert in his individual capacity to carry out the above task. Mr. Volio Jiménez accepted the appointment on 19 September 1980, and the Government of Equatorial Guinea indicated its concurrence on 1 October 1980.

3. From then on, the Expert reported annually to the Commission on Human Rights on the mishaps befalling the Plan of Action for the restoration of human rights and fundamental freedoms which he himself prepared, and which was proposed by the United Nations and accepted by the Government of Equatorial Guinea.

4. At its forty-seventh session, the Commission had before it the report of the Expert contained in documents E/CN.4/1991/54 and Add.1 and 2, highlighting the Expert's concern over the stagnation in the implementation of the Plan of Action along with his view that the Commission's strategy for considering the human rights situation in Equatorial Guinea should be rethought. To that end, he suggested that his mandate should be "broadened and strengthened so that, in investigating the human rights situation in that country, he can consider allegations of possible human rights violations and conduct inquiries on the spot" (E/CN.4/1991/54/Add.2, para. 18).

5. At its forty-eighth session, the Commission considered the report of the Expert contained in document E/CN.4/1992/51, describing the Expert's mission to Equatorial Guinea in November 1991, and his view that the human rights situation in that country had seriously deteriorated. Accordingly, the Commission decided, inter alia, to request its Chairman, following consultations with the Bureau, to appoint a suitable individual of recognized standing as an expert of the Commission with a mandate to make "a thorough study of the violations of human rights by the Government of Equatorial Guinea" (resolution 1992/79, para. 12). In decision 1992/247 of 20 July 1992, the Economic and Social Council approved the Commission's resolution. The Chairman of the Commission on Human Rights, in turn, appointed Mr. Fernando Volio Jiménez as the Expert. In fulfilment of that mandate, the Expert submitted his report and recommendations on the most important events which occurred in Equatorial Guinea in 1992 (E/CN.4/1993/48).

6. The report states, in the conclusions, that there "has been no change in the human rights situation in Equatorial Guinea. The political and institutional conditions that seriously hinder both the free exercise and due legal protection of fundamental rights persist" (E/CN.4/1993/48, para. 23). It further states (para. 27) that the "situation is made worse by the fact that the Government of Equatorial Guinea has shown no sign of the necessary readiness to make sincere changes in its present repressive policy ...". In the recommendations by Mr. Volio Jiménez emphasis is placed on the "Emergency Plan of Action" proposed in his report (E/CN.4/1992/51), which did not receive the official approval of the Government of the country.

7. At its forty-ninth session, the Commission on Human Rights examined the above-mentioned report and, on 10 March 1993, adopted resolution 1993/69 without a vote. In it, the Commission inter alia, expresses "its serious concern at the persistence of politically motivated violations of human rights, such as arbitrary arrests and the application to political prisoners of torture and other cruel, inhuman or degrading treatment or punishment, and at the lack of cooperation with the Expert" (para. 2); "deplores the situation of women in Equatorial Guinea" (para. 4) and calls upon the Government "to put an end to the use of military courts for trying ordinary law offences and to permit the establishment of an independent judiciary" (para. 5). At the same time, the Commission requested its Chairman, following consultations with the Bureau, to appoint "an individual of recognized international standing in the field of human rights who is entirely familiar with the situation in Equatorial Guinea as special rapporteur of the Commission, with a mandate to make a thorough study of the violations of human rights by the Government of Equatorial Guinea on the basis of all the information which he considers relevant, including information furnished by intergovernmental and non-governmental organizations and by private individuals and, in particular, any documentation provided by the Government of Equatorial Guinea" (para. 9). That resolution was approved in decision 1993/277 of the Economic and Social Council and the Chairman of the Commission appointed Mr. Alejandro Artucio (Uruguay) as the Special Rapporteur.

8. At the same time, the Centre for Human Rights and the United Nations Development Programme (UNDP) paid special attention to the situation in Equatorial Guinea and sent several advisory missions there. By agreement between the two organizations, Mr. Eduardo Luis Duhalde was appointed as the

Human Rights Consultant in Equatorial Guinea for the purpose, established in the terms of reference, of assisting the Special Rapporteur in all respects, in particular by providing him with reliable and comprehensive information collected in situ on the human rights situation; by assisting the Monitoring and Follow-up Commission provided for in the National Pact of 18 March 1993; by coordinating in situ the Centre for Human Rights' technical assistance services to the Government of Equatorial Guinea and by helping the Special Rapporteur to define in agreement with the Government of Equatorial Guinea the most appropriate legislative and institutional framework for ensuring an effective improvement in the human rights situation in that country.

9. Of the missions undertaken during this period, the United Nations/UNDP mission of 7 April 1993 deserves special mention. Its aide-memoire constituted a veritable plan of action submitted to the Government of Equatorial Guinea for its consideration. Mention should also be made of the advice given about preparations for elections indicating the measures that should be adopted by the Government to ensure a transparent electoral process and the free exercise of democracy, but which were not applied by the authorities at the proper time.

10. The Special Rapporteur wishes to express his appreciation to the non-governmental organizations and in particular to Amnesty International, the International Movement for Fraternal Union among Races and Peoples and the World Council of Churches, which, pursuant to Commission on Human Rights resolution 1993/69, provided him with valuable information.

I. ACTIVITIES IN SITU: REPORT ON THE SPECIAL RAPPORTEUR'S FIRST AND SECOND VISITS TO THE REPUBLIC OF EQUATORIAL GUINEA

11. The Special Rapporteur paid his first visit to Equatorial Guinea from 2 to 9 October 1993 and his second visit from 11 to 19 December 1993. The groundwork for both visits was laid by the Human Rights Consultant, Mr. Eduardo Luis Duhalde, who also gave very valuable assistance during the visits. Very effective cooperation was also provided by the UNDP Resident Representative in Malabo, Mr. Markku Visapaa, and the UNDP staff.

12. During his visits, the Special Rapporteur tried, on the one hand, to have daily contact with the Government, in order to exchange views and suggestions, to acquaint himself with the various aspects of the situation and to explain the terms of his mandate and the content of resolution 1993/69, as well as the concerns of the Commission on Human Rights. During his second visit, on 15 December 1993, he was received by the Prime Minister and Head of Government, Mr. Silvestre Siale Bileka, and on the following day by His Excellency the President of the Republic, Mr. Obiang Nguema Mbasogo. Both interviews were cordial and positive, particularly the one with the Head of State, in that it was possible to have a very frank exchange of views on the human rights situation in Equatorial Guinea and the conditions that had to be met by the Government in order to obtain United Nations technical assistance. In the interview with the President of the Republic, the Special Rapporteur also showed special interest in the situation of the former soldiers who are still in prison - although their sentences had been reduced - and requested the application of mechanisms that will enable their early release. Among the long list of officials with whom interviews were requested for the purpose of

a more detailed inquiry by branches of government, he succeeded in meeting only some of them. The conversations were first channelled through the Minister for Foreign Affairs and the French-speaking Countries, Mr. Benjamin Mba Ecua Mico, and then through the Minister of Justice and Worship, Mr. Mariano Nsue Nguema, and the Deputy-Minister of Justice responsible for Human Rights, Mr. Francisco Javier Ngomo Mbengono, who were solicitous and obliging in responding to the Special Rapporteur's requests. Each, within his field, cooperated fully and expressed a wish to improve the human rights situation in the country.

13. Notwithstanding the foregoing, on both visits the Special Rapporteur encountered obstacles in the discharge of the mandate assigned to him. On 15 December 1993, police officers, on the orders of their superiors, proceeded to seize an envelope containing reports of human rights violations that a leader of an opposition party attempted to reach the Special Rapporteur. When the confiscated correspondence was not returned and no satisfactory explanation was given, he was forced to submit a note verbale on the incident. The Minister who is the Government spokesman subsequently returned the correspondence and apologized on behalf of the Government. During the first visit, the Human Rights Consultant assisting the Special Rapporteur was also attacked verbally and threatened - as was the United Nations Resident Coordinator in Malabo - by a senior commissioner when both of them met, on 21 September 1993, at the Malabo police station to obtain information about the detention of an FAO guard. The second visit to the Bata city prison, to the "3 August" military camp and to the senior police station in Bata, which was scheduled for 16 December last, could not take place, despite the fact that the Special Rapporteur had received the Government's approval, because the Ministry of Defence was slow in issuing take-off permission at Malabo airport for the aircraft which the Embassy of Spain had kindly placed at his disposal to take him to the continental region.

14. During all these interviews a number of matters were raised including:

(a) The concern of the Commission on Human Rights expressed in resolution 1993/69 over the human rights situation in Equatorial Guinea;

(b) The points contained in the aide memoire submitted by the UNDP/UN mission of 7 April 1993;

(c) The need for the Republic of Equatorial Guinea to ratify or accede to the main international human rights instruments;

(d) The need also for the Government to conclude an agreement with the International Committee of the Red Cross (ICRC), in order to authorize it to make periodic visits to all the prisons in the country and interview all prisoners without exception;

(e) The firm belief that the legal system is very unreliable mainly because of the inadequate functioning of the judiciary, the failure to publish the laws enacted, the lack of proper legislation and the broad powers vested in the military courts;

(f) Compliance by the Government of Equatorial Guinea with the obligation to submit reports in accordance with the international instruments to which it is a party;

(g) Non-application of the death penalty to civilians in extremely summary military trials, the immediate execution of sentences preventing any appeal or petition for pardon by the person sentenced, as in the case of the young man Romualdo Rafael Nsongo, who was executed at Bata beach on 18 September 1993;

(h) The fact that prisoners receive long custodial sentences, in politically motivated trials, handled by the military courts of doubtful legality;

(i) The constant application to detainees of torture and ill-treatment which have left noticeable injuries and after effects;

(j) The lack of freedom of the press, even for those political parties which have been legalized;

(k) Restrictions on freedom of expression, mainly of the leaders and active members of the opposition parties, who are constantly subjected to detention, surveillance and death threats, and even tried for insulting the Head of State;

(l) Inhuman and degrading treatment in the prisons, where food, medical care, beds, sanitary services etc. are lacking; and the detainees are subjected to unpaid and forced external labour and/or solitary confinement in tiny cells where they remain locked up day and night;

(m) The restrictions on the right to move and travel freely throughout the national territory, by means of veritable internal Customs, by requiring that the nationals of the country obtain visas in order to enter and leave it, and by the withholding of many of their passports by the Department of State Security;

(n) The complaints about the electoral process made by the platform and the failure in that regard to respond to the comments made by the United Nations expert;

(o) The situation of women in society, discrimination against them and the lack of opportunities for them, the fact that women are imprisoned because they do not have means to return the dowries to their ex-husbands - imprisonment that is a violation of article 11 of the International Covenant on Civil and Political Rights, to which Equatorial Guinea is a party.

15. In general, the members of the Government who were interviewed said they agreed that there was a need to make human rights effective. In every instance, they said that an improvement in human rights depended on the receipt of international multilateral and bilateral financial assistance. The Special Rapporteur stressed the fact that the international community requires the adoption of specific measures by the Government and not only promises or

declarations of good intent, before channelling either financial aid or technical assistance. He reiterated that certain matters, such as the treatment of detainees and prisoners, did not depend on financial need.

16. It was also suggested to the Government of Equatorial Guinea that it could take a number of measures for immediate improvements in the situation, such as a pardon, reprieve or amnesty for the political prisoners, in particular to those sentenced for the events which occurred on the island of Annobon and for the group of former soldiers who were tried and sentenced for the alleged crime of conspiring to organize a rebellion; their trials did not have the guarantees of due process of law.

17. The Special Rapporteur wishes to express his satisfaction - as he did in the communiqué to the international press on 21 October 1993 - that a few days after he proposed this type of clemency measure, the Government decided, on 12 October, National Independence Day, to grant a full amnesty to and immediately release the eight persons sentenced for the events on the island of Annobon (including two who were fugitives from justice), and a partial amnesty to other convicted persons. Consequently, the persons sentenced to more than 20 years' imprisonment had their penalties reduced by two thirds and those sentenced to less than 20 years had theirs reduced to a half.

18. The Special Rapporteur, accompanied by the Consultant, visited the prisons of the cities of Malabo and Bata. The latter is on the mainland. In the Malabo prison, there were 28 inmates at the time of the first visit and 22 at the time of the second. In the Bata prison there were 45 inmates. Chapter II of this report gives a detailed description of the situation in both prisons.

19. The Special Rapporteur attached special importance to the interviews with individuals, victims of State repression, representatives of the various churches and political parties, non-governmental and intergovernmental organizations represented in Equatorial Guinea women's groups and other sectors of the society. He had several talks with diplomats of donor countries accredited to Malabo, and of course, with the UNDP Resident Representative in Malabo and his associates. He also visited the districts of Los Angeles and Ela Nguema in the city of Malabo and the villages of Sampaca, Basapu, Balorei, Luba, Bococo and Baney on the island of Bioko, and talked with the inhabitants.

20. Other persons interviewed include those listed in annex 1. The information gathered and the evaluation of it are included in the specific analysis contained in chapter II of this document.

21. The Special Rapporteur also proceeded to gather the principal laws currently in force, a trying task because there are no publications on texts of those laws.

II. SURVEY OF THE PRESENT INSTITUTIONAL SITUATION IN EQUATORIAL GUINEA, WITH SPECIAL REFERENCE TO THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

A. Legal structure of the State

22. A curb on power is the basic principle on which any State governed by the rule of law is founded. The formal and material rule of law, with its correlative limitation, a reasonable restriction of the rights of the inhabitants and a check on whether it is applied fairly, for as the essence of a democratic State governed by the rule of law, the basis of which is the principle of the legal certainty - the *jus certum* - of its components. This principle is reflected in the democratic origin of authority in a system based on valid constitutional laws, the separation and independence of the public authorities, particularly by checks and balances, in the requisite disclosure of government, and in the responsibility of the State and its officials. Viewed from this standpoint of a peaceful international doctrine, the institutional system of Equatorial Guinea can hardly be described in these terms. During 1993, despite the provisions laid down in the National Pact of 18 March 1993, no change has occurred in the legal structure of the State to invalidate the assertion contained in the conclusions of the Special Rapporteur, Mr. Volio Jiménez, in his 1992 report, that: "Power remains concentrated in the hands of the President of the Republic, whose responsibilities are combined, both de facto and *de jure*, with the basic functions of public policy, which clearly contradicts the doctrine and practice of constitutionalism, and directly harms the fundamental rights of all individuals" (E/CN.4/1993/48, para. 23).

23. This situation not only occurs in actual fact but is also seen in the legislation in force and the absence of regulations restricting the President's power, something which gives the State model a noticeably authoritarian slant. This emerges from an analysis of the legal framework, of which some brief examples are given below.

1. The political Constitution in force or Fundamental Law

24. The system set out in the Fundamental Law, i.e. the Constitution (adopted by referendum on 17 November 1991) is one of absolute control by the President of the Republic over the three branches of government. It is supremacy unchecked, for article 32 ("The person of the Head of State is inviolable during and after his mandate") and the additional provision ("... the President of the Republic, Obiang Nguema Mbasogo, may not be prosecuted, judged, nor called as a witness before during or after his mandate") enunciates the principle of absolute impunity for his acts. As the Sub-Commission on Prevention of Discrimination and Protection of Minorities recalled in its resolution 1992/23, when it requested a study on the impunity of perpetrators of violations of human rights proposing "measures to combat that practice", the United Nations should gradually strengthen its role in combating impunity. In paragraph 4 of the same resolution, the Sub-Commission also invited Governments and competent bodies of the United Nations to provide information on the question. The impunity enshrined in Equatorial Guinea's

Constitution in the name of a single person runs counter to democratic principles, which lay down that those who govern and those who are governed must both respect the law.

25. The list of the rights and duties of individuals is adequate and follows the general lines of some of the international human rights instruments. However, a number of these rights and freedoms depend on the adoption of laws governing their exercise and since the majority of such laws have not yet been adopted, this casts doubt on whether the rights are actually operative.

26. The text - as the previous Special Rapporteur, Mr. Volio Jiménez, observes - gives the President of the Republic excessive power. Among other powers devolving on the Chief Executive, he has the right to veto laws, yet the Legislature does not have machinery allowing it to insist on maintaining them (art. 38); he can issue decree laws during the parliamentary recess (art. 39 (c)), and they may only be repealed by law (the Executive has practically unlimited power of legislation, since the Chamber of Representatives of the People usually only meets in the months of March and September, under the terms of art. 70); he appoints and dismisses the Prime Minister and civilian and military officials (art. 39 (f) and (h)); he negotiates and ratifies international agreements and treaties (art. 39 (j)); he approves national development plans (art. 39 (n)); he orders the dissolution of the Chamber of Representatives (art. 39 (o)); should the President consider that there is an "imminent danger", he may suspend the rights and guarantees laid down in the Fundamental Law for four months and take special measures, and during such time suspend the operation of the Chamber of Representatives (art. 41); he may decree a state of siege (art. 42); the opening of each ordinary and special session of the Chamber of Representatives of the People requires a decree issued by the President of the Republic (art. 72); the initiative to enact laws lies with the President of the Republic and the Representatives of the People in the Chamber, but "bills from the Representatives of the People shall be deposited on the Table of the Chamber and transmitted to the Government for study" (art. 75).

27. The provisions of the Fundamental Law concerning the Judiciary do not guarantee its declared independence; the President and all members of the Supreme Court of Justice are freely appointed by the President of the Republic for a period of five years (art. 91); the Attorney-General of the Republic, whose main task is to ensure strict compliance with the Fundamental Law, the laws and other legal provisions on the part of all State bodies (art. 92), is freely appointed and dismissed by the President of the Republic (art. 93); the Constitutional Chamber of the Supreme Court of Justice, which conducts hearings on the constitutionality of laws and remedies of amparo against legal acts which violate rights and fundamental freedoms, consists of five members - the President of the Supreme Court (appointed by the President of the Republic) and another four members also appointed by the President of the Republic, two on his personal decision and two on the proposal of the Chamber of Representatives of the People (arts. 94 and 95).

28. It should be added that the constitutional provision which establishes the conditions in order to become President of the Republic (art. 33) sets out requirements for candidates which are plainly prejudicial to leaders of the

opposition, for example, they must "have been established in the country for ten years" (art. 33 (e)). It will be recalled that several of these leaders spent time in exile.

2. Residual legislation

29. Decree-Law No. 4 of 3 April 1980 lays down that "throughout the national territory, only the criminal, civil, commercial, administration, labour and military laws which existed in Equatorial Guinea up to 12 October 1968, in so far as they are not inconsistent with legislation promulgated by the Supreme Military Council since 3 August 1979, until the date of entry into force of this Decree-Law, shall be applied residually". Two comments may be made here.

30. First and foremost, the legislation in question is precisely the legislation in force in Spain on the date Equatorial Guinea reached independence, i.e. the laws issued by the authoritarian regime of Generalissimo Francisco Franco, which Spanish society proceeded to modify substantially shortly after the start of political transition, regarding them as incompatible with a democratic system.

31. Secondly, its residual implementation is relative and is subject to the criterion of the implementing authority, thus creating juridical insecurity, for not only does above-mentioned Decree-Law No. 4/1980 make the operation of the laws conditional on them being "not inconsistent with legislation promulgated by the supreme Military Council" - the Fundamental Law itself contains a "Repealing provision" with effect on "provisions that are inconsistent with those of this Fundamental Law". In turn, the laws enacted by the Chamber of Representatives of the People and presidential decree-laws usually contain a final article repealing "such rules of similar or lower standing as are inconsistent with this law".

3. Main laws in force

32. The restricted legislation promulgated in Equatorial Guinea's 25 years of independent life, particularly the substantive laws sanctioned after the adoption of the latest Fundamental Law (1991), consolidate the autocratic nature of the political system, since they lack objective criteria and any reasonableness in restricting collective and individual rights which are subject to the whim of the implementing authority, normally the President of the Republic. Simply as an example, the Political Parties Act (Act No. 3/1992, of 6 January 1992) lays down that a cause for dissolution of a political party is the undermining of "national concord and harmony", something which is very difficult to visualize as a concept and very easy to generalize about (art. 25 (i)). Similarly, a provision of article 15 stipulates that "nationals of Equatorial Guinea who have acquired another nationality shall provide legal evidence that they have renounced that nationality in order to found or join a political party", yet the constitutional rules at no time prohibit more than one nationality. The Freedom of Association Act (Act No. 4/1992 of 6 January 1992) forbids meetings of more than 10 persons on the public highway without a special authorization (art. 3, *in fine*) and grants broad powers to the Director-General of National Security, or failing him the Provincial Governor, to refuse permission to hold public meetings or demonstrations (art. 8). The Right of Complaint and

Petition Act (Act No. 5/1991 of 10 June 1991) neither fixes a time-limit for the authorities to resolve the complaints nor does it establish any criterion other than the opinion of the actual authority concerned as to whether the complaint is well-founded or inappropriate.

33. Act No. 4/1991 of 4 June 1991, regulating the Exercise of Religious Freedom, and Act No. 5/1992, amending it are analysed in paragraph 68 of this report. They accentuate the authoritarian features of the State. The same may be said of Act No. 13/1992, on the Press and Publishing (see para. 63).

34. The Electoral Act, No. 3/1993 of 12 January 1993 also contains sufficient signs of arbitrary exercise of authority and restricts the rights of citizens to an irrational degree. For example, it establishes that nationals of Equatorial Guinea who possess "foreign nationality and have not legally relinquished it" do not have the right to vote (art. 8 (e)); electioneering material, with the exception of speeches, must be signed by the candidates and two copies submitted for approval to the Minister of Territorial Administration and Local Corporations (art. 60, part 1); "All candidates are strictly forbidden to undermine (...) the consideration of another candidate or depart from the subject-matter of each election" (art. 63).

35. The intensive efforts made by the Special Rapporteur with the collaboration of the Human Rights Consultant to track down and collect the legislation promulgated and in force reveal the difficulties attendant on getting to know the legislation of Equatorial Guinea, which is virtually inaccessible. One set of regulations on top of another, their tacit repeal, gaps in the statutes and an inadequate legislative technique are the basic features. One very obvious gap is that there are no civil, commercial, criminal, civil procedure or criminal procedure codes.

36. All this, along with the lack of precision regarding the residual applicability of the legislation in force in 1968 makes the juridical situation in Equatorial Guinea totally uncertain and slippery legal terrain, particularly in view of what is said below, namely the fact that the laws are not published.

4. Failure to publish laws and government measures

37. The Government of Equatorial Guinea maintains that it is impossible to publish regularly the State's Official Gazette, for lack of a publisher. It is similarly impossible to obtain copies of any issues that have been published, which are out of print. The acts, decree-laws and decrees which the Government promulgates are reported on radio and television. The true meaning of this verbal information is not always apparent and serious uncertainties and doubts are created about the content of these legal texts, which cannot be consulted by interested parties and only with difficulty even by lawyers.

B. Observance of fundamental rights and guarantees

38. From his two visits in October and December 1993 to the territory of Equatorial Guinea, together with his personal observations and the documentation and information contributed by the authorities and by national

and international non-governmental organizations (particularly Amnesty International), as well as statements from the persons interviewed, the Special Rapporteur must conclude that the Republic continues to reveal a persistent pattern of serious human rights violations.

1. Arbitrary arrests, torture and other cruel, inhuman or degrading treatment of prisoners and detainees

39. Following the mass arrests and torture of political and social leaders and civilian personalities - some 140 persons - on 17 December 1992, the after-effects of this illegal procedure continued throughout 1993 when many of the victims were again arrested or persecuted. The Special Rapporteur received oral and written evidence from persons who were maltreated on 17 December 1992 in the Malabo police compound, known as "Rabat". They all agreed that the brutal beatings were meted out to them by a group of policemen headed by the Commissioner for Frontiers and Chief Inspector for Presidential Security, Mr. Timoteo Mebiama Esono, alias "Adjinana".

40. The Special Rapporteur received numerous complaints from opposition political parties and in particular from alleged victims, concerning ill-treatment and torture of political militants in the numerous instances of arrest and imprisonment throughout the country. These complaints refer to cases which occurred in 1993 on the island of Bioko, on the island of Annobon and on the mainland in the province of Kien Ntem (districts of Ebebiyin, Mikomiseng and Nsok Nsomo), Wele Nzas province (districts of Mongomo, Nsok Esabakang and Añisok) and Litoral province (districts of Bata and Kogo). In some cases the injuries were observed and verified by the Special Rapporteur, as in the case of Manuel Abaga, a 27 year-old teacher, arrested in Malabo on 21 August 1993 by a police commission and savagely tortured on the sole charge of being a Progress Party activist. Nearly two months after his release, the Special Rapporteur saw serious injuries on his legs, which had still not healed, caused by blows with sticks and thick cables, and marks on various parts of the body, on account of which he had to be admitted to Malabo hospital. Former soldier Tobías Obiang Nguela, tried and acquitted by a military court in October 1993, showed clear marks of torture on his body. This case gave rise to an urgent appeal by the Commission on Human Rights' Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, on 14 September 1993 (G/SO 214 53-8), which received no answer from the Government of Equatorial Guinea. Former sergeant Jacinto Nculu, sentenced at the same trial to 24 years' imprisonment, sustained serious injuries to the joints which prevent him using his hands normally - according to his statements, because of the time he spent strung up by the wrists - and there are clear signs of blows on the head, as the Special Rapporteur was able to see during his visits to Malabo prison. He also saw the foot injuries of Mr. Pío Miguel Obama, a 33 year-old administrative official, who was arrested in the streets of Malabo on 21 August 1993 and released following torture and interrogation concerning his political activity in the opposition. The Special Rapporteur found similar injuries in the case of José Pablo Nvo, who was arrested on 17 December 1992 and on 21 August 1993. A Catholic priest, Pedro Ncogo, described to the Special Rapporteur the tortures to which he was subjected by the police together with another churchman, Father Luis Ondó Maye, the effects of which he still bears. In his visit to Bata prison, the

Special Rapporteur was able to verify the accuracy of the complaint received from the Popular Union Party about the brutal torture of four of its militants arrested on the mainland. One of them, Efren Osa Ovono, cannot walk without assistance and part of his body is still bandaged because of unhealed wounds.

41. On his second visit to the country, the Special Rapporteur found that the arbitrary arrests and torture and ill-treatment of detainees has continued, for example as in the case of Salvador Cupe and Nemesio Riloha, who were arrested in Basacato del Este, 30 kilometres from Malabo, on election day, 21 November 1993, accused of distributing written material calling on the Bubi people not to vote. They were arrested by a military patrol and severely beaten at the time of their arrest, in front of people from the village, and then kept in Baney police station, where the ill-treatment continued. Both of them, Salvador Cupe and Nemesio Rihola, told the Special Rapporteur that, 7 kilometres on the way, to Malabo, as they were approaching a bridge, they were taken out of the vehicle and beaten up and threatened with being shot if they did not give the names of the persons who had handed them the confiscated political material. In Malabo they were taken to the central police station where they were beaten up again. Then they were taken before a higher official, whom they identified and whose name they communicated to the Special Rapporteur; according to them he threatened and accused them violently and ordered that they should be given 200 strokes each. The Special Rapporteur was able to see the wounds both had in their feet and the bruises and haemorrhages in various parts of their bodies. They were set free in the afternoon of 24 November and both Cupe and Rihola attribute their prompt release to the fact that their situation had reached the international press, which was in Malabo to cover the elections.

42. In the persistent pattern of arbitrary arrests, torture, ill-treatment and persecution of political activists and leaders of the opposition parties, the events that occurred on the mainland after the elections in connection with the tour by leaders of the Joint Opposition Platform (POC) early in December 1993 are particularly serious. The Special Rapporteur has received complaints of 24 arrests in the town of Niefang, including that of the District Chairman of the Progress Party, Mr. Manuel Abaga Okiri. In the town of Ebebiyin, the headquarters of the Popular Union (UP) and Social Democrat Coalition (PCSD) parties were attacked by security forces, who destroyed furniture, equipment and political material, and detained and subsequently tortured local leaders, including Teofilo Ondo Nculu, District Chairman of the UP and Mauricio Nso Nchama, Executive Secretary of the PCSD. Mr. Norberto Siboco Ricoso, national leader of the PCSD and a member of the POC delegation which toured the mainland was also held at Bata Airport when attempting to board a plane for Malabo.

43. Recent cases include the arrests in Bata which accompanied the expulsion of the Spanish Consul, Mr. Diego Sánchez Bustamante (see para. 74). On the night of 10 December 1993, after going to the offices of the consulate to collect bibliographical material, 28 students from the National Distance Education University of Spain (UNED) were arrested as they came out, and their families have reported that they were subjected to ill-treatment. They were released 10 days later.

2. Summary executions and arbitrary application of the death penalty

44. The Special Rapporteur has received reports of six cases of deaths at the hands of the security forces in 1993. From the statements and evidence, the Special Rapporteur is convinced that in at least four of the cases there are specific matters which tally and which lead to the presumption that the deaths were caused by agents of the security forces and were politically motivated. The cases were those of detainees who were tortured to death. In a fifth case, police responsibility for the death and the political links were corroborated by members of the National Pact Monitoring and Follow-up Commission. The sixth case concerned the death penalty on an 18 year-old activist in an opposition political party, decreed by a military court on the grounds that he had caused the death of another civilian in a fight, and he was given no opportunity to request a pardon or appeal to the Supreme Court of Justice. In none of these cases was the Special Rapporteur informed that any administrative or legal investigation had been carried out. The cases are described below.

(a) Case of Pedro Motú

45. The situation of former army lieutenant Pedro Motú Mamiaga Oyana, who had taken part in the overthrow of the dictator Macías and his capture has already been brought to the attention of the Commission on Human Rights. The Expert, Mr. Fernando Volio Jiménez, told in a report submitted in January 1992 (E/CN.4/1992/51, para. 70) that he had met him in Malabo prison, where he was being held in inhuman conditions. The Expert states in his report that Pedro Motú had suffered political persecution since 1979 and had been forced to leave the army. He was then placed under house arrest and had been detained on 16 different occasions. Mr. Volio reported that Motú had been arrested on 2 December 1990 in Ebebiyin, and transferred initially to Bata and then to Malabo prison, on charges of attempting to promote political pluralism and of insulting the President of the Republic, although he had not been tried for any offence. He had been permanently locked up in a cell 1 m by 1.50 m, held incommunicado, only allowed out once a week to wash himself, and had had to relieve himself in the cell itself. Steps taken by the then Expert of the Commission on Human Rights secured his release on 7 January 1992 and, although he had not been tried or sentenced, Act No. 2/92 on Amnesty for Political Offences, was applied to him.

46. Following his release, Pedro Motú settled in his home village, Odjip-Mbo, on the mainland, and left for exile in Gabon, when he learned that the Government was attempting to arrest him again. Following the signing of the National Pact, he returned to Equatorial Guinea on 25 July 1993 from Douala, Cameroon, whereupon his passport and identity card were seized by the airport authorities in the capital city. From that time on he engaged in no public activity - except for a visit two days after his arrival to the Archbishop of Malabo, whom he asked to intercede with the Government on his behalf to put an end to his unjust persecution - until 22 August, when he went to the Ureca Hotel in Malabo city to greet the Chairman of the Popular Union Party, Andrés Moisés Mba Ada, who had returned from a 14-year exile that day.

47. According to direct reports obtained by the Special Rapporteur, at approximately 3 p.m. on 22 August 1993 the Secretary of National Security, Manuel Nguema Mba, appeared in the hotel, accompanied by another Security official, who found that Mr. Pedro Motú was in the hall, and used his portable radio to call in more policemen; Mr. Andrés Moisés Mba and Mr. Pedro Motú went to the former's room, where, a few minutes later, Motú was captured when the room door was violently broken in. The witnesses concur that Pedro Motú was savagely beaten about the head and the rest of the body when he was dragged down the stairs, and was put into the police van in a lamentable physical state. Another witness, who was in detention that day in the police compound known as "Rabat" (where the presidential guard of Moroccan origin had previously been quartered), said that he was witness to the brutal torture of Mr. Motú around 7 p.m. According to the testimony of persons detained in Malabo prison, during the night of 22 August 1993 Pedro Motú was brought to the prison unconscious and died without regaining consciousness in the early morning of the 23rd. An improbable official report stated that Pedro Motú had committed suicide on 23 August when he realized the "enormity of his crimes". As soon as they heard of his death, the family claimed the body and were refused; they were neither permitted to see it nor to be present at the burial. According to the complaints by the political parties belonging to the Joint Opposition Platform, particularly Popular Union Progress Party and Social Democracy Convergence, high-level government officials took part in arresting and torturing Mr. Motú; their names were given to the Special Rapporteur in the hope of an impartial investigation. According to the same reports, after Motú's death, his brain, heart and genitals were removed for ritual purposes by four doctors whose names were also given to the Special Rapporteur. The political parties comprising the Joint Opposition Platform have declared Mr. Pedro Motú a "Martyr of the Transition in Equatorial Guinea". The Government for its part, presumably to justify the detention of the victim, subsequently arrested a series of former military men and brought them before a military court on a charge of conspiring to rebel at the prompting of Pedro Motú. They were convicted on 2 October, but their sentences were partially reduced (partial amnesty of 12 October 1993), 10 days later.

(b) Summary executions on the island of Annobon. Cases of Simplicio Llorente Yaye and Manuel Villarrubia

48. On 13 August 1993, in the town of Pale on the island of Annobon, which lies in the Gulf of Guinea, more than 600 kilometres from the capital, a group of students from the island on a return visit - they study in Malabo since there are not even primary schools on the island - decided on an act of protest to draw the attention of the national authorities to the situation of the population of Annobon, which is without air and sea communication, the most elementary health care, electricity and subsists only on the few natural products of one rocky environment and sea coast. They decided to hold Governor Marcos Ondo Nsue and the Military Lieutenant while they were drinking in the town's only bar. This they did on 13 August at 11 a.m., tying both of them to their chairs and disarming them. Witnesses agree that the captors had no firearms. At 2 p.m., members of the military battalion who had been informed of what had happened, burst into the bar firing their weapons. The students who were holding the Governor and the military chief simply fled, pursued by the guards. In a street in the north-east of Pale, the young

Simplicio Llorente Yaye was captured by military personnel and riddled with bullets even though he was unarmed. Some witnesses have asserted that the young man had not taken part in the incident. Later, on the sea shore one of the ringleaders in the detention of the Governor, Manuel Villarrubia, was also riddled with bullets; according to witnesses, although he was carrying in his belt the weapon seized from the officer, he neither used it nor showed it when he fled. Corporal Baudilio Bacale was named as the material perpetrator of both executions.

49. Later, according to witnesses, the military forces destroyed and sacked a number of dwellings, burning the houses of the families of the students involved in the incident, who were gradually captured in the forests and tortured. Arrests and ill-treatment of various citizens then became widespread, including the then deputy member of the Chamber of the People, Mr. Saturnino Ronda, Vice Chairman of the Office of the Government Party (PDGE), in the province of Annobon; terror reigned for approximately 72 hours until the ship the Acacio Mañe arrived and took the prisoners, chained and in a lamentable state, to Bata. The Special Rapporteur was able to interview both those acquitted in the military trial and those who were convicted, who were in Bata prison at the time of his first visit there. Two of the convicted persons, Francisco Medina and Osvaldo Cartagena, sentenced to 28 years' imprisonment, showed clear signs of the torture to which they had been subjected. The inconsistency in the charges of rebellion for which they were sentenced and the arbitrary nature of the trial itself led the Special Rapporteur to request the Government to amnesty them, and, as has already been explained, this request was granted on 12 October 1993. Since these events, the population of Annabon has been living in complete isolation, without means of transport or any possibility of communication by telegraph or radio.

(c) Case of Gaspar Mba Oyono

50. This person was chairman of the local committee of the Popular Union Party in the village of Ewong-Nsomo. He was arrested by order of the Government Delegate, Lucio Anselme, and brutally tortured in Nsok-Nsomo police station. He was admitted to Ebebiyin hospital in a serious state and died on 27 July 1993. His family was refused the death certificate showing the cause of death.

(d) Case of Damaso Abaga Nve

51. He was arrested on 30 March 1993 by members of the national police in the town of Ebebiyin, capital of the province of Kie-Ntem, on the mainland, because he was walking around the streets by night, and was taken to the local police station by Police Sergeant Pelayo Mba Obiang. Mr. Abaga Nve, aged 47, from the village of Ncuakieñ-Esandon, suffered from mental disorders, although the reports indicate that he was not at all dangerous. According to the on-the-spot investigation by members of the National Pact Monitoring and Follow-up Commission appointed for the purpose, whose report is in the hands of the Special Rapporteur, the prisoner was taken to the police compound where he was beaten to death in the early morning of 31 March. When they saw that he was dying, the police called in the Director of the hospital, who saw when he arrived at the police premises that he was dead. According to the forensic report, a copy of which is also in the Special Rapporteur's possession, the

corpse showed: (a) two small grazes on both sides of the forehead with bruising under them; (b) incomplete fracture of the left forearm some 4 to 5 cm from the inside of the wrist; (c) a cut 3 cm long and 1½ cm deep between the little finger and the ring finger of the left hand and (d) double rib fracture in the right hemithorax, and grazes on both wrists and the upper third of the left breast about 3 cm long. Since no internal examination - autopsy - was made of the corpse, no order having been issued, the forensic experts were unable to determine the basic cause of death. It may be noted that the district judge was not called in nor was the corpse legally removed. According to evidence from the family and the Secretary-General of the Popular Union Party of the district of Ebebiyin, Marcelino Asumu Nsue, the victim, who had joined the party in 1991 when he was still in his right mind, used to escape from his village and wander around the town of Ebebiyin insulting the ruling party, something which had led on various occasions to his being beaten up by the police and taken back home. His family had been warned that, if it happened again, he would lose his life.

(e) Case of Romualdo Rafael Nsogo

52. This 18-year-old, from the village of Alum-Esamongon in the district of Bata, was executed by firing squad on the local beach on 18 September 1993, after being found guilty of the crime of murder in highly summary proceedings conducted by a court martial in Bata. Not more than 24 hours elapsed between the sentence and the execution. The events which gave rise to the application of the death penalty took place on 28 August 1993 in the village of Bindung, Bata district, where Romualdo Rafael Nsogo got into a fight with several youths over a girl (Nsogo had gone to visit a former girlfriend and the local youths attacked him to chase him off), according to evidence collected by the Special Rapporteur. Given the circumstances, Romualdo Nsogo had defended himself from the alleged attack with a knife he was carrying, and caused the death of Antonio Bibang Elka. He ran off and was arrested two weeks later. When his home was searched, the authorities found evidence that he was a member of the Social Democracy Convergence Party (CPDS); from then on the affair was regarded as political and came under military jurisdiction. Neither the affair itself nor the personal situation of the victim or of the perpetrator of the murder warranted military jurisdiction or the application of the death penalty. Similarly there was no justification for not giving him the time or the opportunity to submit an appeal or a petition for a pardon. Evidence collected by the Special Rapporteur during his visit to Bata prison from prisoners who were there with Romualdo Nsogo all shows that he himself told the authorities that he wanted to request the President of the Republic to commute his sentence, that he needed legal assistance, but that he was not allowed to appeal.

53. The Special Rapporteur ventures to point out that article 6, paragraph 4 of the International Covenant on Civil and Political Rights, to which Equatorial Guinea is a party, sets out the right of anyone sentenced to death to seek pardon or commutation of the sentence. In all cases, and particularly in those subject to the death penalty, the accused shall also have the right to appeal to have his conviction and sentence reviewed by a higher tribunal. This can be seen in article 14, paragraph 5 of the Covenant (Human Rights Committee; Trevor Collins v. Jamaica case, 25 March 1993).

3. Due process of law (independence of the Judiciary and the right to a defence). Military jurisdiction

54. There is no doubt, in the light of the above information, that the independence of the Judiciary is not guaranteed and that the rights of the defence, contrary to the provisions of the Universal Declaration and the International Covenant on Civil and Political Rights are not respected. In some of the cases analysed, such as the proceedings under case No. 35/93 brought against Hilario Mañana Mañana in No. 1 Examining Court in the city of Bata, it was found that not only had the procedural deadlines been exceeded, but the burden of proof had in practice been shifted, for the judge admitted as evidence the mere statement by the traditional chief of the village of Ebongonzong in Micomesen district that Hilario Mañana had insulted the Head of State, and it was left to the accused to prove his innocence. A former member of the Supreme Court of Justice and practising lawyer, Mr. Fermín Nguema Nsono, has confirmed to the Special Rapporteur that the courts are not independent in Equatorial Guinea, that the judges are appointed by the President of the Republic, that there is no judicial profession and that the decisions of the courts are determined by the views of the Executive. Nor is there employment security for judges; since January 1992 the Judiciary has already been reshuffled three times.

55. As to military jurisdiction, it is apparently unlimited in criminal affairs and covers offences that are not of a specifically military nature, even when it is not military personnel, but ordinary civilians who are involved. The decisions of the courts-martial do not allow appeals to the Supreme Court, even in cases involving the death penalty. As a rule, the highly summary proceedings compels detainees to choose defence counsel from among the officers of the military garrison where the court sits. In some cases, persons convicted by courts-martial said there had been no dialogue between them and their court-appointed defence counsel during the trial.

56. When it comes to trying abuses committed by military personnel, as has been recognized by the Commission's Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20, dated 17 January 1991, paras. 408-410) military jurisdiction is as a rule a source of impunity. In such circumstances, and particularly during periods of political unrest, the use of military courts, made up of officers of the armed forces, who try civilians or their own comrades-in-arms is not a satisfactory solution.

4. Treatment of detainees

57. As already stated, the Special Rapporteur had access to the Malabo and Bata prisons. During his visit to Bata Public Prison, he found a total lack of material resources. The daily ration of two loaves of bread, the lack of beds or bunks, of medical and educational assistance, of sanitary facilities and the obligation to work without pay are part of the prisoners' wretched lot. The prison has 42 male inmates and 3 women, who lack any privacy as they are held in a hut from which it is possible to communicate with the men's huts. The Special Rapporteur observed traces of recent corporal punishment on the bodies of several prisoners, who said that they had been punished at the prison itself. During his visit, he held private interviews with many of the

inmates. Among them were the persons convicted for the incidents in Annobon, and a woman who was imprisoned because she was unable to return the dowry to her ex-husband (see para. 70).

58. The Special Rapporteur wishes to place on record that the authorities - the Director of Prisons of the Ministry of Justice and Worship, Mr. Ricardo Eló and the Governor of the public prison - willingly accepted his request for private and confidential interviews with all the inmates he wished. Nevertheless, he is obliged to draw attention to something very negative and disturbing, namely that inmates whose families are unable to provide them with food - in some cases because they live several hours away - had a daily food ration of only two loaves of bread. There is no cooking in the prison for the inmates. The attention of the authorities referred to and of the Minister of Justice and Worship was drawn to this. As regards the system of work outside the prison although this is a considerable advantage for the prisoners from the humanitarian angle, as they leave the prison daily and are not kept locked up, it is unacceptable that they should receive no form of pay and that they should be obliged to work (work is compulsory for those designated by the prison administration and is not imposed by a court decision) and do domestic chores and repairs at the homes of local officials.

59. This situation violates article 8, paragraph 3, of the International Covenant on Civil and Political Rights and article 2, paragraphs 1 and 2, of ILO Convention No. 29 concerning Forced or Compulsory Labour (the labour is not performed pursuant to a lawful judicial decision and the services are provided to individuals without pay).

60. As to Malabo prison, with 28 inmates at the time of the first visit and 22 at the time of the second, both visits took place in the same manner and the Special Rapporteur received the full cooperation of the Director of Prisons, Mr. Ricardo Eló and of the prison governor. The physical conditions are slightly better in Malabo, as the inmates at least have mattresses to lie on. The inmates said that they were not physically ill-treated in prison, but complained of the lack of food and medical care. In these respects, the situation is the same as at Bata prison.

61. The Special Rapporteur was able to check that all the inmates on the register had been presented to him. The prisoners with whom the Special Rapporteur spoke at Malabo prison included a group of former military personnel sentenced by the military courts. At least one of them bore clear signs of having been beaten all over his body and had difficulty walking. He said he had been tortured during interrogation before being taken to jail. There was only one women in the prison, although she had permission to leave as she was close to childbirth.

62. In the opinion of the Special Rapporteur, the treatment given to prisoners fails to respect their basic rights and violates the standards set by article 10 of the International Covenant on Civil and Political Rights, the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663C (XXIV) and 2076 (LXII)) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, dated 9 December 1988). The Special Rapporteur raised with the competent authorities the question of the need for

an effort to improve the situation of detainees and prisoners, and this was well received by the authorities (the Minister of Justice and Worship, the Deputy Minister and the Director of Prisons), who assured him that they shared his wish.

5. Freedom of expression

63. There is no freedom of expression in Equatorial Guinea, either in law or in practice. The so-called Freedom of Assembly and Demonstration Act (Act No. 4/1992, dated 6 January) is designed, in its own words, "to regulate and ensure discipline at public meetings and demonstrations". It is restrictive and the rights set out in article 13 (b) of the Fundamental Law are therefore without substance. In addition, the Printing and Publishing Act (No. 13/1992, dated 10 October), particularly articles 14 and 15, notoriously restricts the right to print and publish, and by no means guarantees freedom of the press. Article 2 lays down a number of general rules with which the press has to conform, on pain of criminal, civil or administrative liability, subjecting the press as a whole to the whim of the official responsible for ensuring compliance with the Act, requiring, for example, that the press must "not be influenced by private interest" and must "reliably inform the public".

64. At the present time there is no written publication legally in circulation except La Voz del Pueblo, the organ of the Partido Democratic Party of Equatorial Guinea (PDGE, the ruling party). Although the newspaper La Verdad is the organ of a lawful political party, Social Democracy Convergence (CPDS) and, according to article 50 of its statutes, which have been approved by the Government, "the CPDS party's organ of information is the newspaper La Verdad, which shall be published as frequently as circumstances permit and its own administration decides", it has been specifically prohibited. By a decision dated 26 September 1993, the Minister of Territorial Administration issued the following order: "For the purpose of putting an end to such criminal behaviour, marked by a lack of the respect due to institutions and persons when criticizing political and administrative affairs, I hereby prohibit the publication and distribution of the newspaper La Verdad ...)".

65. Any criticism of the authorities is likely to result in legal proceedings under article 147 of the colonial Penal Code, a residual provision, the first part of which stipulates that "Anyone who insults or threatens the Head of State in writing or publicly in his absence shall incur rigorous imprisonment". The Code also stipulates that rigorous imprisonment is from 6 to 12 years (art. 30). The courts of Equatorial Guinea extensively apply this provision, despite the fact that the case law of the Spanish courts had established that "attacks against the regime may not be considered as insults to the Head of State". This legislation is used to hold the press in check and, although convictions are rare, there are daily arrests for alleged offences, with the resulting ill-treatment and torture.

6. Freedom of religion

66. Act No. 4/1991, dated 4 June 1991, "Governing the exercise of religious freedom", and amending Act No. 5/1992 of 10 January 1992, relate to freedom of thought, conscience and religion in the broadest sense. In 1993, the amendments to these laws requested by churches of various denominations, and which the Government had promised to introduce over a year ago, were not made. The Special Rapporteur considers that the statutes in question go beyond the bounds of the acceptable, and jeopardize the things they ought to protect. A number of their provisions authorize undue interference by various government agencies in the activities of the various churches and may affect not only freedom of religion, but also freedom of worship (art. 8, para. 2; arts. 6, 10, 12, 14 and 16). These laws could undermine the provision contained in the Fundamental Law (art. 13, F), which guarantees "freedom of religion and worship". Actually, articles 22, 23 and 25 prohibit and penalize behaviour that is perfectly legitimate for any citizen of Equatorial Guinea, such as respectfully criticizing "the activities of State agencies", "questioning the lawfulness" of a particular act or even "making allusions" to State institutions.

7. Freedom of movement and freedom to travel

67. There are notorious restrictions on the freedom of the citizens of Equatorial Guinea to enter and leave and freely travel within the country, as a result of which they are denied the right freely to enter and leave their own country and to travel within it (International Covenant on Civil and Political Rights, art. 12). A special visa is required to enter and leave. The Special Rapporteur has received countless complaints - in particular from leaders and activists of opposition parties - that their passports are withheld by the authorities without any reason whatsoever, and that when they are not refused, visas are delayed for many months. There are also cases in which citizens are placed under house arrest by decision of the authorities. Where citizens who have served in the armed forces are concerned, under an order dated 30 December 1991 of the Ministry of Defence that is still in force, "all former military personnel in the chief localities of the municipalities of their respective administrative districts are hereby informed that they are to return to their villages, which they may not leave without informing the competent authorities. Anyone who acts in breach of this provision during the transition to a pluralist political system shall be liable to the maximum penalties". The Special Rapporteur has received information that citizens are not always free to travel from the island of Bioko to the mainland or vice versa, as they may not be allowed onto the boat or plane, usually on account of their political affiliation. There are also internal military checkpoints on the mainland and on the island of Bioko, such as the military post on the road to Luba, before the village of Sampakas, which controls entry to the city of Malabo by the eastern highway.

8. Situation of women

68. In compliance with the provisions of resolution 1993/46 of the Commission on Human Rights, in which it requests all special rapporteurs and working groups of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in the discharge of their

mandates, regularly and systematically to include in their reports available information on human rights violations affecting women (para. 2) the Special Rapporteur has devoted particular attention to this topic. He has reached the conclusion that there is blatant discrimination against women in all fields of opportunity, in comparison with men. Approximately 50 per cent of the female population lack any kind of education. Only 8.6 per cent have completed primary education and only 4 per cent secondary education. According to the study on the situation of women and children carried out by UNICEF this year, only 0.1 per cent of women have any vocational training, i.e. an education that trains them for work. Only 112 women have received any kind of university education. This indicates that the level of education of the women of Equatorial Guinea is extremely low, particularly in rural areas, despite their vital role, as they constitute the bulk of the labour force in agriculture and produce over 50 per cent of the country's GDP. As to conditions of work, their lack of training considerably hampers their participation in productive activities. Women's participation in the public sector is extremely low. Most of them perform subsistence activities, services to persons, street trade or other marginal occupations. As a result, most of them lack social security and legal protection of any kind.

69. The women's groups with whom the Special Rapporteur spoke complained about the lack of opportunities for them and said that the women of Equatorial Guinea are socially, politically and economically insignificant within the system. In contrast, although there are few opportunities for the women of Equatorial Guinea to attain positions of responsibility, they show deep interest and involvement in their country's politics, as is illustrated by the letter, dated 22 September 1993, sent by a group of them to the Secretary-General of the United Nations.

70. Particularly serious is the persistence of the traditional practice of imprisoning women who, after their marriage breaks up, are unable to return the contribution made by the husband to her family when the marriage was solemnized ("the dowry"), together with the sums spent by him for her subsistence "while she was his dependent". The period of prison is unspecified, and lasts until the dowry is returned. When he visited Bata public prison, the Special Rapporteur found at least one woman, called Inmaculada Omogo, who had been a prisoner on such grounds for five months. It should be pointed out that before his visit, the Special Rapporteur informed the Minister of Justice that imprisonment on such grounds was contrary to the provisions of article 11 of the International Covenant on Civil and Political Rights, which stipulates that no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation, in this case a dowry payment. The official denied that there were any such cases in Equatorial Guinea, although the Special Rapporteur found that this was not the case. On his second visit to Malabo jail, the Special Rapporteur found that Mr. Felipe Mba Obiang was imprisoned there by order of the district judge, as neither he nor his 25 year-old daughter had been able to return the sum of 450,000 CFA francs, representing the dowry plus the amount spent on her maintenance, when she left her husband (1 US$ = 300 CFAF).

9. Ethnic discrimination

71. The Special Rapporteur has received numerous reports of ethnic discrimination in Equatorial Guinea. If we accept the definition of an ethnic group (including national minorities) as a group of persons that considers itself to be a class on the basis of common descent and being linked by emotional ties, a common culture and the desire to preserve the group (Richard M. Burkey, "Discrimination and Racial Relations"), we must first of all recognize that there are different ethnic groups on the territory of Equatorial Guinea. The country's population is largely made up of various ethnic groups of Bantu origin: the Fang, Bubi, Ndowe, Kombe and Bujebas, together with the Annobonese, i.e. the inhabitants of the island of Annobon. The majority ethnic group which controls most decision-making positions within the State structure is the Fang, to whom the President of the Republic himself belongs. Although further study of this issue is necessary on account of its complexity, there are two indications of the possible existence of ethnic discrimination against the Bubi and the Annobonese.

72. The Bubi, the indigenous people of the island of Bioko, the seat of the national Government, claim through their village heads and councils of elders that they are oppressed by the Fang. The Special Rapporteur was able to ascertain that, because of the high percentage of abstention in Bubi villages in the elections held on 21 November 1993 and the letter sent by a number of leading members of the Bubi to the President of the Republic, claiming the right to self-determination, a campaign of detention, involving torture and ill-treatment, death threats and persecution was instituted and orders were issued to expel persons from villages on the grounds that they belonged to the Bubi ethnic group. This happened in the cases of the detentions of Salvador Cupe, Nemesio Riloha (described in para. 41) and Patricio Bolekia Bomao, which took place in Basacato del Este; of the President of the Sampaka Village Council, Aya Looba Brikopa, and of Félix Cuaresma Jhony a 16 year old. The Special Rapporteur has a photocopy of the order for the expulsion of Josefina Collins from the village of Cacahual (Bioko Norte), because the government representative decided on 26 November 1993 that, as she had refused to vote, in keeping with the line taken by the Bubi, she was not entitled to live in a Fang village.

73. The existence of ethnic discrimination towards the inhabitants of the island of Annobon is seen in their isolation, as they have no means of transport other than the boat link provided every six months by the Acacio Mañe; the suspension of Spanish cooperation by order of the Government of Equatorial Guinea; the lack of medical care and educational facilities for the population; the prohibition on access to telecommunications; the failure to provide fuel to generate electricity and the repression unleashed on 13 August 1993, already mentioned earlier. However, as already stated, in view of the complexity of the subject it will be analysed in a later report.

10. Diplomatic incidents and expulsion of aliens

74. A number of diplomatic incidents occurred during 1993, such as the threat, made in a note verbale dated 8 January 1993, to declare the Ambassador of the United States of America, the representative of the European Community and an official of the Spanish Embassy, personae non gratae on account of

their protest against constant human rights violations. In the case of Spain, which is the largest donor country in terms of its contributions, on 16 January permission was refused for a diplomatic pouch to enter Equatorial Guinea and the pouch had to be sent back to Spain. Between 7 August and the date of this report, 10 Spanish citizens have been expelled and another's residence visa has been withdrawn, without any reason being given. It should also be noted that one of those expelled, Dr. Luis Costart Tafalla, had been living there for over 10 years; his wife is from Equatorial Guinea and he has children who were born there. A particularly serious incident occurred in Niefang on 6 June 1993, when a Spanish aid worker, Mrs. C.M., was raped by two individuals, one of whom she identified as Alejandro Sima Obiang, a member of the State security forces. The authorities informed the Special Rapporteur that they were unable to locate the official. The confrontation came to a peak with the expulsion, on 11 December 1993, of the Spanish Consul in Bata, Mr. Diego Sánchez Bustamante, on the grounds that he had - according to the authorities - met political opposition leaders. Spain's reaction was not long in coming and on 14 December it ordered the expulsion of a diplomat of Equatorial Guinea accredited to the Embassy in Madrid and a substantial reduction (50 per cent) in Spain's cooperation aid to Equatorial Guinea.

75. The incidents described above are but some examples of an intense and deepening confrontation in bilateral relations that the Government of Equatorial Guinea apparently wishes to engage in with the Government of Spain. Most of the foreigners expelled from Equatorial Guinea are Spanish nationals and the grounds advanced for their expulsion frequently do not match the information obtained during the Special Rapporteur's missions. In addition, most of the diplomatic incidents have been with Spain. Similar incidents have affected relations with the Ambassador of the United States of America. Recently the Ministry of Foreign Affairs of Equatorial Guinea refused to accept a note from the Ambassador. In the note, the Embassy of the United States of America in Malabo informed the Government of the statement issued by the State Department, dated 18 November 1993, concerning the preparations for the general elections to be held in Equatorial Guinea on 21 November. The statement was couched in harsh and critical terms. On 25 November, the note sent in reply by the Ministry to the Embassy of the United States of America, dated 25 November, states literally that the note was returned "as it was an odious hotchpotch of lies and shameless allegations ..." (the Centre for Human Rights has the full text of both notes).

11. Other economic, social and cultural rights

76. In order to ensure this report does not exceed the requisite length, and in conformity with the provisions of Commission on Human Rights resolution 1993/94.A, paragraph 1, dated 11 March 1993, these issues, which are of considerable importance, will be discussed in a later report if the Commission deems it desirable.

12. Committee on Human Rights in Equatorial Guinea and the National Pact Monitoring and Follow-Up Commission

77. Neither of these two bodies operates or performs any kind of activity. This was confirmed for the Special Rapporteur by members of both bodies as well as by government officials.

13. Political rights: the electoral process

78. A start was finally made on the so-called transition to democracy in Equatorial Guinea, announced by the Government in 1991, with the signing of an agreement between the Government of Equatorial Guinea and the existing political parties. The commitment, known as the National Pact, which was signed on 18 March 1993, first of all established the binding nature of the agreements for the signatories. For its part, the Government undertook to "to release all prisoners and detainees held for reasons of conscience or opinion" and to cooperate in "the return and resettlement of citizens of Equatorial Guinea overseas who wish to return to their country". Article 5 and the following articles established essential commitments on the part of the Government of Equatorial Guinea regarding the development of the transition to democracy. They were: the free movement of persons, goods and the publicity material of the political parties; the issue of passports and visas without any form of restriction; a prohibition on entering and searching residences and offices for political reasons; a prohibition on the withholding and tampering with correspondence; total abolition of all extrajudicial deportations; equal conditions of access to the mass media for all political parties; guaranteed free conduct of the activities of political parties throughout national territory. The Government also undertook to put an end to the prevailing impunity and to punish public officials and government agents for all arbitrary acts which tend to reduce or restrict the rights and freedoms provided for by law, while ensuring the free exercise of the rights and freedoms recognized in article 13 of the Fundamental Law. Accordingly the Pact declared respect for and protection of the leaders of political parties by the authorities responsible for public order, financing for the activities of the political parties and a thorough review of the electoral roll with the assistance of international experts and the collaboration of the political parties. In article 14, the National Pact established the "Monitoring and Follow-up Commission", comprising five members designated by the Government and one for each political party.

79. The Special United Nations Mission (UNDP/UN Mission to assess the enabling environment for the implementation of the country programme) which visited Equatorial Guinea 20 days after the National Pact was signed (3-8 April 1993) submitted an aide memoire summarizing the point of view of the international community regarding the measures required to establish the necessary domestic and external climate of confidence. In turn, on 11 August 1993 the Secretary-General, Mr. Boutros Boutros-Ghali, informed the Government of Equatorial Guinea of the need for prompt adoption of the recommendations made by the United Nations inter-agency missions, the one already referred to in April 1993 and the technical mission of electoral experts (26 June to 10 July 1993), as a prerequisite for sending observers to the elections. The Government of Equatorial Guinea has repeatedly claimed that it has complied with its commitments and with the requirements, as was

stated by His Excellency the President of the Republic in his letter of reply to the Secretary-General of the United Nations, dated 21 October 1993. Nevertheless, events subsequent to the signing of the agreement between the Government and the opposition demonstrate that the Government of Equatorial Guinea has largely failed to fulfil the commitments it assumed in the National Pact.

80. Accordingly, it is no surprise that, as a result of the countless hurdles and after withdrawing their representatives from the inoperative Monitoring and Follow-up Commission, many of the parties in the Joint Opposition Platform (POC) took the decisions set out in their document dated 22 September 1993, which include the decision "to reiterate their resolute intention not to take part in the general elections unilaterally called by the Government on 21 November this year until the climate of intimidation, of death threats to leaders and members of the political opposition come to an end and until the conditions set out in the five points are complied with, in order to permit elections with a minimum of freedom, transparency and objectivity". For their part, Equatorial Guinea's two main donor countries - Spain and France - after a meeting between their two Governments at which the situation in Equatorial Guinea was analysed, issued a joint declaration in which they "regretted that the failure to respect a number of the commitments made by the Government in the National Pact and the conditions under which the ballot of 21 November has been organized have not allowed the most significant sector of the opposition to take part in the election, thereby preventing the elections from being truly multi-party elections. On account of this, Spain and France have decided not to send observers to the elections."

81. The general elections were held on 21 November 1993. Of the 14 legally recognized parties, 6 fully took part in them. Two splinter groups of the parties in the Joint Opposition Platform (POC), which the Government rapidly recognized despite the provisions of the Political Parties Act, also took part. Eight parties (including the two whose splinter groups were accepted) abided by their decision to stay out of the elections including the three that are publicly recognized as being the largest and best established of the opposition forces: Popular Union (UP), Progress Party (PP) and Social Democracy Convergence (CPDS). The Government failed to comply with its legal obligation (art. 45.1 of the Act) to publish the electoral rolls 10 days in advance and the rolls were only released 24 hours before the voting. If the rolls are correct, the number of registered voters nationwide was 119,103, although the number in the 1991 referendum was 156,000, a figure which suggests that approximately 25 per cent of the eligible population chose not to take part in the elections and did not register as voters. According to the official figures, 81,734 persons voted nationwide, i.e. a 68.62 per cent turnout of registered voters, with 31.38 per cent who did not go to the polls. As regards the political parties which participated in the election, in accordance with the provisions of article 178 of the Electoral Act, which prohibits the presentation of an incomplete state of candidates, it may be safely concluded that only the PDGE and the Liberal Democratic Convention (CDL) complied with this requirement. Under the system for the allocation of seats applied by the Government, the Democratic Party of Equatorial Guinea, currently in power, had 68 deputies and the 12 remaining seats were shared among three other parties competing in the elections. Countless complaints have been made by the parties in the POC about military personnel voting

several times in various polling stations and districts, ballot boxes being broken open, returns being falsified, opponents being prevented from voting and of violence and threats being used to force people to vote for official candidates. It has not been possible for the Special Rapporteur to analyse or verify the complaints, as he was not in the country on the day of the elections.

82. The Special Rapporteur is convinced that the right of political parties not to present candidates was treated by the Government as unlawful, and their leaders were prohibited from holding meetings, speaking on radio and television and even travelling through the country. One of the parties which took part in the elections and obtained one seat, the Liberal Party, through its National Executive, denounced "electoral manipulations for the sole purpose of swelling the number of fraudulent votes cast for the Democratic Party of Equatorial Guinea", and identified a range of alleged irregularities, on the basis of which it contested the validity of the elections. It should also be mentioned that the international press which followed the elections also cast doubt on the official figures in view of the degree of abstention, which stood out at 70 per cent in the opinion of the Joint Opposition Platform. The heads of the diplomatic missions of the United States of America, France, Spain, the European Union and leading church dignitaries did not attend the swearing in of the members of the Chamber of Representatives who had been elected.

III. CONCLUSIONS

83. The Special Rapporteur was able to establish that some changes have occurred in the human rights situation in Equatorial Guinea. He is pleased to report the positive aspects of a number of measures adopted by the Government that will help to promote greater respect for human rights. They include the acceptance of the principle of a multi-party political system, the legalization of 14 political parties, the release of political prisoners and the steps recently taken, on 12 October 1993, to grant pardon and amnesty to several persons convicted of political or politically motivated acts. Also deserving of mention are the steps taken by the Ministry of Justice and Worship, at the request of the Special Rapporteur, to improve the food of the inmates in the Malabo prison and to make the system of the so-called "closed" prisons more flexible.

84. Another positive move was the decision taken in August 1993 by the Kingdom of Morocco to withdraw the soldiers who were serving as the security guards of the President of Equatorial Guinea. This Moroccan contingent of some 400 men, had been stationed in the country since 1979 and had been involved in police work on more than one occasion. Their withdrawal had been repeatedly demanded at both the national and the international levels.

85. The measures by the authorities described above are a step forward, but they are still not enough for anyone to claim that human rights are effectively being respected. The Special Rapporteur concludes that serious and persistent violations of human rights and fundamental freedoms continue to occur in the Republic of Equatorial Guinea.

86. In the discharge of his mandate, the Special Rapporteur became convinced that civilian society is allowed little room in the political, social and economic life of Equatorial Guinea, because the areas are dominated by the State. It is therefore of the utmost importance to promote the development of mechanisms to enable civilian society to function within a democratic system, and thus ensure that it will effectively have the right to create, the right to move ahead and the right to participation.

87. In the opinion of the Special Rapporteur, the Government should adopt various legislative and administrative measures to ensure that an appropriate climate of trust is established between the Government and the political opposition, so that the major national issues can be discussed. The discussion should also include the parties and groups which refused to take part in the general elections of November 1993 on the grounds that no guarantees were provided for their participation. By the same token, the authorities should give clear instructions to police officers and soldiers to stop considering political opponents as enemies.

88. There have been no changes in the juridical structure of the State since the Commission on Human Rights held its forty-ninth session. Power basically continues to be concentrated in the hands of the President of the Republic, to the detriment of other branches of government, and this obviously hinders the functioning of a democratic system and prevents the establishment of a State governed by the rule of law.

89. Under the present legal system, the independence and impartiality of the Judiciary are not guaranteed, nor is respect for the right to a defence during a trial. There are obvious shortcomings and irregularities in the operation of the administration of justice, so that sometimes some persons are placed in a situation in which they have no defence at all. This is compounded by a noticeable lack of rigour in the legal system, on account of overlapping rules, gaps in legislation, the residual application of Spanish legislation dating from before 1968 that has been overtaken by time and historical circumstances, and the non-publication of the laws.

90. Arrest and arbitrary detention of political opponents are still frequent in different regions, and are often accompanied by torture and cruel and inhuman treatment. This report describes several cases of persons who died as a result of police action, some presumably as a consequence of the treatment received in prison. In the cases which resulted in death, the Special Rapporteur was not aware that any administrative or judicial investigation had been carried out and still less that those responsible had been punished.

91. Many of the persons accused of political activities or because of the inordinate increase in the list of punishable offences were tried in summary court martial proceedings. In his report, the Special Rapporteur pointed out that military courts should have jurisdiction only over offences of a strictly military nature, committed by military personnel. Furthermore, under the present legal system, no appeals may be lodged with the Supreme Court of Justice against the rulings and judgements of the courts martial, not even in cases where the death penalty has been imposed.

92. The treatment of prisoners and detainees has been discussed more thoroughly in the report because it is felt to be a violation of the international provisions contained in the treaties to which the Republic of Equatorial Guinea is a party.

93. It can be said that there is neither de jure nor de facto freedom of expression in the country, because the laws on freedom of assembly and expression (Act No. 4/1992) and on the press and publications (Act No. 13/1992), severely restrict such freedom.

94. Although religious freedom is exercised daily without any major obstacles, it is not adequately protected by the current laws on the subject, and this is the opinion not only of the Special Rapporteur but also of representatives of various denominations.

95. Citizens have difficulty in or are prevented on political grounds from effectively exercising the right to enter and leave their own country, and even to travel freely within it.

96. In accordance with Commission resolution 1994/46, the Special Rapporteur paid careful attention to the situation of women in Equatorial Guinea. He found that, as far as their situation and legal and social status are concerned, they are still passed over and discriminated against at the educational, occupational, social and political levels, despite the efforts made by the Government through the Ministry for the Advancement of Women and Social Affairs.

97. Matters relating to ethnic discrimination have been examined (paras. 71 to 73), but the Special Rapporteur feels that, because of their importance and particular complexity, they require further study.

98. Similarly, other economic, social and cultural rights, such as health, education and housing, should be examined in a later study.

99. Over the past year, there were continuing expulsions of foreigners. In many instances, the reasons given by the authorities do not tie in with the information obtained on the spot by the Special Rapporteur.

Political rights

100. The signing of an agreement, called the National Pact, between the Government and the existing political forces, on 18 March 1993, was a milestone in the process of transition of democracy started by the Government. It paved the way for very important measures which are discussed in paragraph 78 of this report. The Special Rapporteur is, however, convinced that the authorities have failed to fulfil several of the commitments it entered into in the National Pact.

101. The electoral process was pursued without any regard for the observations and recommendations made by the inter-agency missions sent by the United Nations. In addition, there were detentions, ill-treatment, prohibitions and intimidation by the Government agents of the political opponents, which finally led eight of the big parties to withdraw and to

advocate abstention from the general elections on 21 November 1993. The Governments of the countries which are Equatorial Guinea's major aid donors, as well as other inter-governmental institutions, including the United Nations, decided not to send observers to the elections or to give any financial support, because they thought that "the elections were not genuinely pluralist in nature".

102. Lastly, the authorities of Equatorial Guinea have not fulfilled the obligations to submit periodic reports to the committees established under the International Covenant on Human Rights, which makes it difficult to monitor the actual implementation of those instruments. These obligations stem from the fact that the State has ratified or acceded to these human rights instruments. Nor have the authorities seen fit to reply to the request for reports made by the Special Rapporteur on the question of torture and the Chairman of the Working Group on Enforced or Involuntary Disappearances.

IV. RECOMMENDATIONS

103. In the light of the conclusions in this report, the Special Rapporteur considers that the Commission on Human Rights should urge the Government of Equatorial Guinea to meet the following basic conditions:

(a) In the field of human rights

(i) Put an end to arrests, arbitrary detentions and persecutions on political grounds;

(ii) Put an end immediately to torture and cruel, inhuman or degrading treatment or punishment;

(iii) Characterize torture and cruel, inhuman or degrading treatment or punishment as specific criminal offences;

(iv) Adopt measures to ensure that the police and security forces will act as professional institutions for the prevention and punishment of crime, under the command of civilian authorities and with functions that are clearly distinguished from those of the armed forces;

(v) Place on trial and impose criminal and administrative penalties on any one guilty of violations of human rights, and grant compensation to the victims of abuses of authority;

(vi) Urgently improve the situation of prisoners and detainees, providing them with adequate food and medical care, a paid work programme, and temporary and early release;

(vii) Grant the free and full exercise of political rights to all citizens without discrimination of any kind on grounds of race, national or ethnic origin, sex, political or other opinion;

(viii) Adopt measures to enable all political parties to exercise their right of participation;

(ix) Ensure full respect for the exercise of the right to freedom of opinion, expression and dissemination of ideas, with no restrictions other than those established by the law in any democratic society;

(x) Adopt measures to guarantee the right of persons residing legally in Equatorial Guinea to travel freely throughout the national territory;

(xi) Guarantee the right of nationals to enter and leave their own country. Abolish the entry and exit visa requirement for nationals of Equatorial Guinea;

(xii) Adopt measures to guarantee and facilitate the return of refugees and political exiles, including the signing of agreements with the Office of the United Nations High Commissioner for Refugees (UNHCR) and with the International Organization for Migration (IOM);

(xiii) Eliminate discrimination against women and adopt positive measures designed to improve their effective participation in the educational, occupational, social and political fields;

(xiv) Ratify or accede to all the international human rights instruments to which the Republic of Equatorial Guinea is not yet a party;

(b) In the field of legislation

(i) Adopt legislative and administrative measures to guarantee the complete independence and impartiality of the Judiciary and to ensure due legal process, including the right to a defence when on trial;

(ii) Restrict the scope of military jurisdiction to cases involving strictly military offences, committed by military personnel;

(iii) Legislate on the remedies of habeas corpus and amparo;

(iv) Amend the laws governing the activity of political parties, religious activity, the freedoms of assembly and expression, freedom of the press, trade union rights and the electoral law;

(v) Begin actual work on the codification of civil, trade, labour, criminal and procedural law;

(vi) Revise national legislation to ensure that it is in full conformity with international human rights principles and standards;

(vii) Amend the Fundamental Law in order to establish, inter alia, the independent functioning of the Legislature and the Judiciary, to guarantee human rights and fundamental freedoms, in particular the right to life, physical integrity and freedom;

(viii) Publicize all legislation and government decrees by regular and constant publication of the Boletin Oficial del Estado;

(c) In the political process

(i) Conclude a new National Pact between the Government and all political forces, which will enable a consensus to be reached on lending substance to the transition to democracy, the chief objective being democratic and transparent rules of the game, for the purpose of the forthcoming presidential elections in 1996;

(ii) Establish participation mechanisms to monitor compliance with the new National Pact;

(iii) Ensure the free development of political life throughout the national territory and firmly instil in the security forces and all public officials the principles of equality before the law, the right of all people of Equatorial Guinea to express their opinions freely and to associate with others in advancing them.

104. To meet the basic conditions stated above and to keep the Commission on Human Rights duly informed, it would be necessary to maintain the contacts already established in the course of two successive visits, between the authorities and the Special Rapporteur, assisted by the Human Rights Consultant.

105. Technical assistance to the Government for the implementation for the proposed measures. In order to give the necessary impetus and the technical support for the adoption of such measures, the Centre for Human Rights together with the United Nations Development Programme should provide the Government of Equatorial Guinea with the following assistance:

(a) Experts should be sent to cooperate with national specialists in compiling existing legislation, drafting codes and other laws and revising national legislation in order to ensure that it is in conformity with the international human rights principles and standards;

(b) An expert should be sent to train officials in preparing the periodic reports to be submitted to the committees established under human rights treaties, conventions and covenants. The training should also include the necessary steps for ratification of or accession to international human rights instruments;

(c) Training courses should be held on the independence, impartiality and suitability of the Judiciary, democratic principles and national and international human rights law, for judges, prosecutors and senior government officials;

(d) Training courses should be held on human rights and the treatment of detainees and prisoners, for military and police personnel and prison officers;

(e) Training courses should be held on human rights and fundamental freedoms, for leaders of political parties and for representatives of non-governmental organizations and social sectors;

(f) A seminar should be held with papers submitted by national and international experts, on the rights of women and the position of women in the society of Equatorial Guinea. This seminar should be for government officials and representatives of social sectors.

ANNEX

Main interviews held in the Special Rapporteur's two visits to Equatorial Guinea, in October and December 1993

Mr. Roger Leenders, Delegate of the Commission of the European Communities (European Union)

Mr. Jacques Gazon, Ambassador of France

Mr. John Bennett, Ambassador of the United States of America

Mr. Arturo Avello, Ambassador of Spain

Mr. John K. Shinkaiye, Ambassador of Nigeria

Mr. Jean Paul Ayina, First Secretary, Embassy of Cameroon

Mr. Eberhard Noldecke, Ambassador of Germany

Mr. Hilaire Mathas, Ambassador of Gabon

Mr. Wang Yoncheng, Ambassador of China

Mr. Diego Sánchez Bustamante, Consul of Spain in the city of Bata

Dr. Alain Christophe Brun, Representative of the World Health Organization

Dr. Rubén Delmir Cury, Adviser for malaria control

Dr. Inusse Noormahamoed, Technical Officer in charge of the programme to strengthen the national health infrastructure

Mrs. Lidia Gaviria, FAO Programme Officer in Malabo

Officer in charge of the UNICEF Office in Malabo

The Regional Representative of the International Committee of the Red Cross based in Yaounde, Cameroon

Members of the Commission for the Voluntary Return of Refugees and Exiles of Equatorial Guinea

Monsignor Idelfonso Obama, Archbishop of the Catholic Church

Pastor Bienveido Samba, Representative of the Mt. Sinai Church Congregation of Cherubim and Seraphim

Pastor Jaime Teibiale Sipoto, Secretary-General of the Reformed Church of Equatorial Guinea

Pastor Ricardo Buu Menu, Representative of the Seventh Day Adventist Church

Representatives of the Assembly of God Church

Rev. Father Pedro Ncogo Eyi, Catholic priest of the Claretian Shrine

Mrs. Trinidad Morgades Besari, Principal, National School of Agriculture

Mr. Pablo Ruiz Jarabo, Coordinator of Spanish Cooperation

Mr. Ignacio Sánchez Sánchez, Director, Hispanico-Equatorial Guinean Cultural Centre

Mr. Ciriaco Boquesa, writer

Mr. Juan Antonio Martínez, Director, "Africa 2000" radio station

Members of the National Pact Monitoring and Follow-up Commission

Mr. Fabián Nguema, member of the Legislative Support Commission

Mr. Fermín Nguema Nsono, lawyer, former member of the Supreme Court of Justice of Equatorial Guinea

Mr. Bita Rope Laesa, Manager, La Unión Cooperative Centre, Malabo

Mr. Pedro Cristino Bueriberi, Representative of Institutions of the Bubi ethnic group

Mr. José Macheba Ikaka, former Minister of the Public Service and victim of the repression of 17 December 1992

Mr. Arsenio Moro and Mr. Fernando Abaga, UNDP officials, Malabo, former detainees

Mrs. Guadalupe Nge, Women's Secretary, Progress Party

Mrs. Gaudencia Mbang, leader, Women's Popular Union Party

Mr. Manuel Abaga, Teacher, recently detained and tortured

Mr. Miguel Ndong, Representative of the Progressive Democratic Party (PDP), which has not been legalized

Delegation of former workers of SEGESA, the Electricity Company of Equatorial Guinea, dismissed for belonging to opposition parties

Mr. José Pablo Nvo, recently detained and tortured

Mr. Pío Miguel Obama, recently detained and tortured

Mrs. Genoveva Nchama, witness to the detention of and the violence against Mr. Pedro Motú

Mr. Antonio Ela Mbomio, witness to the detention of and violence against Mr. Pedro Motú

Mr. Andrés Moisés Mda Ada, witness to the detention of and violence against Mr. Pedro Motú. President of the Popular Union Party (UP)

Mr. Pedro Nsue Ngema, brother of Mr. Pedro Motú

Miss María Luisa Oyana Motú, eldest daughter of Pedro Motú

Mr. Saturnino Ronda, former deputy for Annobon and current President of the Democratic Party of Equatorial Guinea in Annobon; detained, tortured, tried and acquitted for the events in Annobon in August 1993

Mr. Reginaldo Zamora Segorbe, detained, tortured and tried and acquitted for the events in Annobon

Mr. Constantino Villalba Solana, detained, tortured, tried and acquitted for the events in Annobon

Mr. Severo Moto Msa, President of the Progress Party (PP)

Delegation of the Popular Union Party (UP)

Mr. Francisco Mabale, President of the Social Democratic Party (PSD)

Mr. Victoriano Bolequia, Vice-President of the Progressive Democratic Alliance Party (ADP)

Mr. Jesús Ocue Moto, General Coordinator of the Social Democrat Coalition Party (PCSD)

Mr. Plácido Micó, Leader of the Social Democracy Convergence Party of Equatorial Guinea (CPDS)

Mr. Carmelo Mbá Bacale, Deputy Secretary-General of the Popular Action Party of Equatorial Guinea (APGE)

Mr. José Mcheba Ikaka Masoko, President of the National Democratic Union Party (UDENA)

Mr. Carlos Ona Boriesa, Programme Secretary of the Socialist Party of Equatorial Guinea (PSGE)

Mr. Teodoro Mitogo, Deputy Secretary-General of the Social Democrat Union Party of Equatorial Guinea (UDS)

Mr. Manuel Owono Obama, Political Adviser of the Social Democrat and Popular Convergence Party (CSDP)

Mr. Santos Pascual Bikomo Nanguande, President of the Liberal Party

Mr. Salvador Ezequiel Echek, Deputy, Member of the Chamber of Representatives of the People for the Liberal Party

Mr. Salvador Cupe, recently detained and tortured

Mr. Nemesio Riloha, recently detained and tortured

Mr. Aya Looba Brikopa, President of the Council of Sampakas, former detainee

Mr. Patricio Bolekia Bomao, resident of Basacato, former detainee and victim of torture

Mr. José Olo Obono, practising lawyer

NOTE: The Democratic Party of Equatorial Guinea (PDGE) and the Democratic Liberal Convention Party (CLD) were invited to be interviewed but declined the invitation.
